

Program Evaluation

**DIVISION OF LICENSING AND REGULATION
CABINET FOR HEALTH SERVICES
OFFICE OF INSPECTOR GENERAL**

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LEGISLATIVE RESEARCH COMMISSION

Frankfort, Kentucky

Committee for Program Review and Investigations

October 1997

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The Program Review and Investigations Committee is a 16-member bipartisan committee. According to KRS Chapter 6, the Committee has the power to review the operations of state agencies and programs, to determine whether funds are being spent for the purposes for which they were appropriated, to evaluate the efficiency of program operations and to evaluate the impact of state government reorganizations.

Under KRS Chapter 6, all state agencies are required to cooperate with the Committee by providing requested information and by permitting the opportunity to observe operations. The Committee also has the authority to subpoena witnesses and documents and to administer oaths. Agencies are obligated to correct operational problems identified by the Committee and must implement the Committee's recommended actions or propose suitable alternatives.

Requests for review may be made by any official of the executive, judicial or legislative branches of government. Final determination of research topics, scope, methodology and recommendations is made by majority vote of the Committee. Final reports, although based upon staff research and proposals, represent the official opinion of a majority of the Committee membership. Final reports are issued after public deliberations involving agency responses and public input.

FOREWORD

The Program Review and Investigations Committee directed its staff to conduct a study of the public protection role of the Kentucky Cabinet for Human Resources (now the cabinets for Health Services and Families and Children). The subsequent study focused on the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services. The Division performs a vital public protection role through its licensing, regulating, certifying, inspecting and monitoring activities in thousands of health care facilities in the state

The Program Review and Investigations Committee adopted the staff report and recommendations on April 10, 1997. A September 1997 follow-up report by the Division of Licensing and Regulation is also attached.

The report is the result of dedicated time and effort by Program Review staff and secretaries Jo Ann Paulin and Mary Scott Lee. Our appreciation also is expressed to the Division of Licensing and Regulation, the Office of Inspector General and to the Cabinet for Health Services for their cooperation and assistance.

Don Cetrulo
Director

Frankfort, Kentucky
October 1997

MEMORANDUM

TO: The Honorable Paul E. Patton, Governor
The Legislative Research Commission, and
Affected Agency Heads and Interested Individuals

FROM: Senator Joey Pendleton, Chairman
Representative Jack Coleman, Co-Chairman
Program Review and Investigations Committee

DATE: April 10, 1997

RE: Staff Report -- Division of Licensing and Regulation, Cabinet for Health
Services, Office of Inspector General

The Program Review & Investigations Committee directed its staff to review the public protection role of the former Kentucky Cabinet for Human Resources (CHR). This study focuses on the Division of Licensing and Regulation (L & R) in the Office of Inspector General.

The Division performs a vital public protection role through its licensing, regulating, certifying, inspecting and monitoring activities in thousands of health care facilities in the state. While the agency has professional and conscientious employees, there are areas in which operations, enforcement procedures and management could be improved.

This review found problems with timeliness of health facility inspections, backlogs in licensing and certification work, staying current in complaint investigations and maintaining clear lines of communication between central and regional offices. Problems could be linked to staff and resource needs, time conflicts caused by multiple responsibilities and management procedures.

The following study makes several recommendations directed at helping the agency in its efforts to improve its ability to protect the public. Recommendations include the need for a staff analysis of workload distribution; improvements in the health facility inspection process; information sharing and cooperation with other agencies, including law enforcement; complaints investigation monitoring improvements; and replacement of the nursing home rating system with one that is more consumer-oriented.

We would like to thank the Inspector General, the staff of the Division of Licensing and Regulation, state and local long-term care ombudsmen, the Division of Protection and Advocacy, and other state agencies for their assistance and cooperation in providing data for this study.

Questions concerning this study should be addressed to Joseph Fiala, LRC Assistant Director for Program Review.

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EXECUTIVE SUMMARY

CHAPTER I

INTRODUCTION

The Division of Licensing and Regulation (L&R), located in the Office of Inspector General, Cabinet for Health Services, is a public protection agency. In general, the dozens of employees with the Division issue health and child care facility licenses and permits, assure compliance with state and federal regulations, issue citations, penalties and ratings, and provide technical review of applications for facility construction. The Division "provides support to all elements of the Cabinet . . . as it relates to the many and varied licensing and regulatory activities of the Cabinet," according to the mission statement. L&R's functions call for the Division to, among other things:

- Implement and assure compliance with standards;
- Issue licenses and permits;
- Review program or facility applications;
- Resolve conflicts and assure dialogue between the Division and providers;
- Evaluate its performance; and
- Enforce federal standards for Medicare and Medicaid providers.

Personnel within the Division have dual duties, 1) conducting state license visits and surveying or inspecting health facilities and services that are Medicare/Medicaid certified, and 2) investigating complaints filed against private facilities and services. Until recently, the Division also investigated abuse and neglect complaints lodged against state-run facilities. L&R personnel, most of them working out of regional offices, visit hundreds of nursing homes, day care centers and other health facilities and services, doing first-time inspections and follow-up inspections, along with checking out complaints.

CHAPTER I

This report addresses the performance of L&R in various functional areas and offers recommendations aimed at making the Division more efficient and effective in its public protection role.

The report does not address L&R's performance in the area of day care enforcement. That enforcement appears much more rigorous now than a few years ago. Public attention focused on the Division's effectiveness following the May 1993 death of a Central Kentucky infant left unattended inside a car by a state-certified baby-sitter. In the aftermath, the Cabinet and the OIG instituted changes in the Division's policies and procedures to ensure stricter adherence to quality of care standards for licensed day care facilities. The changes ensured the Division would be systematic in the handling of day care complaints. Greater emphasis was placed on stronger sanctions, such as the authority to close day care operations if situations are life-threatening. Even though day care enforcement has improved, the Cabinet still must contend with unlicensed child care providers. L&R handles complaints concerning unlicensed child care providers, violations of health or safety requirements and abuse or neglect.

Scope of Study

In 1995, the Program Review & Investigations Committee directed its staff to review the public protection role of the former Kentucky Cabinet for Human Resources (CHR), primarily by examining the management and operations of CHR's Division of Licensing and Regulation (L&R). Some of the early study objectives included: determining whether L&R's current duties are consistent with the Division's overall mission; determining the effectiveness of the current organizational structure; identifying available resources and how they are allocated between surveys and abuse and neglect investigations; and determining the effectiveness of the abuse and neglect complaint investigation process.

For purposes of this study, public protection is defined as those functions and activities designed to protect the public from neglectful and abusive incidents, and unhealthy or unsafe conditions. The activities include licensing, regulating, certifying, inspecting and monitoring. When functions like licensing and regulation, child and adult protective services, and health monitoring break down, the potential for grave and imminent risk to the health and safety of citizens increases.

Methodology

In the process of this study of the public protection role of the Division of Licensing and Regulation, Program Review staff interviewed the Cabinet for Health Services' Inspector General and staff, including the Division Director, Cabinet legal counsel, and Licensing and Regulation central office and regional program staff members. In addition, Program Review staff interviewed officials with the federal Health Care Financing Administration, personnel from the Department of Public Protection's Division of Protection and Advocacy, Division of Aging Services' state nursing home ombudsmen

and regional ombudsmen, and youth advocates. Staff members also visited four Kentucky regional offices, where they reviewed complaint files for health care and children's residential facilities, and surveyed health care providers.

Overview

Chapter II offers a summary of L&R's mission, powers and organization. Chapter III describes the Division's licensing and certification process and the inherent problems associated with that. Chapter IV deals with L&R's complaints investigation process and related concerns. Chapter V is a discussion of L&R's management.

Committee Action

This draft staff report and recommendations were presented to the committee on March 14, 1997. The Inspector General, the Division Director for Licensing and Regulation, the State Long-Term Care Ombudsman, regional long-term care ombudsman, the Department of Public Advocacy and interested citizens responded to the report at the April 11 meeting. The Inspector General and L&R Division Director agreed with the basic findings and recommendations. The committee adopted the study and recommendations by unanimous vote. The Division was requested to keep the committee informed of its progress.

CHAPTER II**L&R'S MISSION, POWERS, ORGANIZATION**

The Division of Licensing and Regulation (L&R) has certain missions and functions, and must adhere to state statutes and regulations, along with federal regulations pertaining to its contractual work for the federal Health Care Financing Administration (HCFA). That contract is among several in which the Division participates. The number of licensed and/or Medicare/Medicaid certified health care facilities and services under L&R's purview stood at 4,350 in 1996 and is growing.

In addition to its missions and functions, L&R has certain state statutory powers and also has the force of federal law behind it when it comes to inspecting and certifying Medicare/Medicaid facilities and services. Key state authority is in the licensing and re-licensing of facilities and the investigation of complaints. One of the primary federal responsibilities is inspection of long-term care facilities under the HCFA contract.

L&R's organizational structure changed in December 1996, according to a memorandum issued by the Division Director. The realignment creates Assistant Division Director posts and puts particular responsibilities under their supervision. The four regional offices are under the direct responsibility of the Assistant Division Directors. Most of the one-on-one contact with facilities and services takes place at the regional level. Staff numbers are down in 1997 compared to 1996. The state hiring "cap" sets limits on how many people the Division may employ. Division funding levels are increasing, with federal dollars accounting for the bulk of outside appropriations.

Within the last year, several areas of responsibility have been transferred from L&R. By executive order, responsibility for private employment agencies was transferred from L&R to the Workforce Development Cabinet. Responsibility for investigating abuse and neglect complaints in juvenile treatment centers was transferred to the state Justice Cabinet. Abuse and neglect complaint investigative responsibilities in state-operated psychiatric hospitals and intermediate care facilities for the mentally retarded (ICF/MR) are being shifted back to the Department for Social Services (DSS), in the Cabinet for Families and Children. L&R will continue to investigate possible violations of regulations.

Division's Mission, Functions

The Division has specific missions and functions, and must adhere to state statutes and regulations, along with federal regulations pertaining to its contractual work for HCFA. That contract is among several in which the Division is involved. The Division has over 4,350 licensed and/or Medicare/Medicaid certified health care facilities and services which it must oversee. And the number is growing.

Division's Mission Statement Outlines Agency's Functions

L&R's mission statement directs the Division to support all segments of the Cabinet "as it relates to the many and varied licensing and regulatory activities . . ." In addition to its mission statement, L&R has a list of functions to which it must adhere. L&R's functions call for the Division to, among other things:

- Implement and assure compliance with standards;
- Issue licenses and permits;
- Review program or facility applications;
- Resolve conflicts and assure dialogue between the Division and providers;
- Evaluate its performance; and
- Enforce federal standards for Medicare and Medicaid providers.

The General Assembly gives the OIG primary responsibility for licensure and regulation of health facilities and services and authority to undertake the review of health facilities participating in transplant programs under KRS 194.030(12). Another statute, KRS 216B.105, gives the Cabinet authority to regulate the licensure of health facilities. That statute allows the Cabinet to deny, revoke or suspend a license for failure to comply with the law or regulations. KRS 216B.042 gives the Cabinet authority to:

- Establish reasonable application fees by administrative regulations;
- Issue, deny, revoke, modify, or suspend licenses or provisional licenses;
- Establish licensure standards and procedures to ensure safe, adequate and efficient health facilities and health services; and
- Establish by regulation:

1. Patient care standards and safety standards,
2. Minimum operating standards,
3. Minimum standards for training,
4. Required licenses for medical staff personnel,
5. Minimum standards for maintaining patient records,
6. Licensure application and renewal procedures; and
7. Classification of health facilities and health services according to type, size, range of services and level of care.

In addition to legislating broad regulatory powers, the General Assembly enacted legislation to regulate long-term care facilities and allow fines for violations. According to state statutes, these include a range of facilities such as family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Public Law 100-203, nursing homes, and intermediate care facilities for the mentally retarded and developmentally disabled. L&R regulates long-term care in the areas of administration, nursing service, dietary and nutritional services, life safety, physical and restorative therapy, social services and activities, drugs and biologicals, medical services, patient rights and record keeping.

The Division has the power to enter and inspect the premises of any health care facility. The Cabinet may revoke licenses or recommend the initiation of disciplinary procedures for health care providers for any violation of KRS 216B.

KRS 211.461-466, adopted in 1991, authorizes the registration of private health care review agents. Private review agents conduct utilization reviews of patient billings to determine the medical necessity and appropriateness of hospital and medical resources charged. The agents approve or deny payment or make recommendations on payment depending on the medical necessity and reasonableness of the medical procedures.

HCFA Contract Among Long-standing Relationships

The Division has some long-standing contractual relationships, primarily with HCFA at the federal level, but also with other state agencies. Under the HCFA contract, L&R has the following duties:

- Identify potential providers and suppliers of services in Kentucky;

- Explain the requirements and conditions for qualifying as providers or suppliers;
- Conduct surveys of providers and suppliers to determine compliance with Medicare;
- Explain requirements for corrective plans of cited deficiencies;
- Collect financial interest information on the providers and suppliers; and
- Apply the standards for life safety from fire and other standards in the regulations.

L&R also certifies laboratories under the Clinical Laboratories Improvement Amendments of 1988 (CLIA).

There are several contractual relationships with state agencies as well. In 1981, L&R's Licensure and Certification Branch assumed the responsibility for investigating allegations of abuse and neglect in the Cabinet for Human Resources residential facilities. However, these responsibilities have shifted to other agencies. Memorandums of understanding (MOUs) allow the Department for Medicaid Services (DMS) to perform certain services for L&R's Health Facilities and Services Section. L&R also performs services for DMS. In addition, the state Fire Marshal's Office conducts life safety code surveys for HCFA under contract with the OIG.

Division Responsible for Over 4,350 Facilities, Services

L&R has under its purview 4,352 licensed and/or Medicare/Medicaid certified health care facilities and services, and day care facilities, that must undergo state licensing and/or federal certification surveys. Of that number, there were 2,728 health care facilities in FY 96 and another 1,878 day care centers. The number of licensed and/or Medicare/Medicaid certified health care facilities and services has increased from 2,458 in FY 94 to 2,728 in FY 96 (Table 2.1). According to L&R, the number of health facilities and services currently stands at 2,805. Using the current available figures, the number of health care facilities and services averages out to over 23 for each of Kentucky's 120 counties.

Physician office laboratories (Medicare certified, but not licensed) rank highest on the list of health facilities and services, with 558 locations in FY 96, followed by 418 long-term care facilities, housing mostly the elderly, and 374 family care homes. L&R regulates 128 hospitals.

Figures supplied by L&R for the last three fiscal years show Division survey, complaint and state license visits are climbing, particularly from FY 95 to FY 96.

According to an Assistant Division Director, the increase in the total number of activities may be because of the increasing number of facilities. He said L&R was responsible for 300 more facilities in FY 96 than in FY 95. "With an initial (survey), a complaint and a revisit, you can have two or three visits per facility. That's just health facilities," he said. Just as total activities have increased, so have the number of levels of care among health facilities in the state. Levels of care are the various segments of health care delivery. For example, a nursing home could have two or three levels of care. According to the Division, levels of care declined slightly in FY 95 over FY 94, but then jumped significantly in FY 96.

TABLE 2.1
Division Of Licensing And Regulation Health Facilities And Services

Type Of Facility/Service	1994	1995	1996
Alcohol and Other Drug Centers		270	382
Ambulance	277		
Ambulatory Care Centers	9	8	7
Ambulatory Surgical Centers	21	20	20
AMBSAT	15		
Chemical Dependency	2		
Day Health Care Centers	27	42	51
ESRD - Renal Dialysis	32	36	38
Family Care Homes	410	383	374
Freestanding Chemical Dependency Centers		2	2
Health Maintenance Organizations	13	14	15
Home Health Agencies	117	116	115
Hospices	29	28	28
Hospitals	127	129	128
Independent Physical Therapists*		64	72
Laboratories	129	85	83
Long-term Care Facilities	396	402	418
Mammography	117		
MR/DD Group Homes	24	35	36
Mental Health Centers	67	14	14
Mobile Health Services	66	63	68
Networks	2		1
Nursing Pools	42	42	46
Physician Office Laboratories*	270	521	558
Physical Therapist	59		
Primary Care Center Extensions	21	30	30
Primary Care Centers	32	41	43
Psychiatric Residential Treatment Facilities.	5	9	10
Rehabilitation Agencies	53	48	54
Rural Health Clinics	24	38	55
Special Health Clinics	46	51	53
Specialized Medical Technology Services	26	28	27
TOTALS	4,916	2,519	2,728

*Medicare certified, but not licensed.

SOURCE: Compiled by Program Review staff from information received from the L&R.

Enforcement Powers

L&R has state statutory powers and also has the force of federal law behind it when it comes to inspecting and certifying Medicare/Medicaid facilities and services. One of the key federal responsibilities is inspection of long-term care facilities under the HCFA contract and certification for Medicare/Medicaid. At the state level it is responsible for licensing and complaint investigation. To enforce standards, it may give facilities low rating, levy fines, require operational changes or close facilities.

State Powers Include Ratings, Fines, Suspensions, Revocations and Closures

Statutes give the Division certain enforcement powers. Under KRS 216B, L&R may fine nursing homes for two categories of violations, Type A and Type B. A Type A violation represents imminent danger to residents, while a Type B means direct or immediate relationship to health, safety and security for residents. A facility may be fined from \$1,000 to \$5,000 for a Type A violation and from \$100 to \$500 for a Type B. Under KRS 216.560(6), if a facility receives a repeat violation for a statute or regulation that it was fined for during the last 12 months, the amount of the current fine may be tripled. Fines levied do not accrue to the Division as agency receipts. The General Assembly has earmarked them for the Kentucky Nursing Incentive Scholarship Fund, a fund to encourage nursing.

Beyond fines, the Cabinet may revoke licenses or certificates of need or recommend the initiation of disciplinary procedures for health care providers, including closure of facilities or services. Ultimately, the Cabinet may selectively transfer residents if care is inadequate or seek a court injunction to terminate the operation of a long-term care facility cited for a Type A violation.

L&R also uses a three-level long-term care rating system. Facilities are designated superior, conditional or unrated. Problems related to the rating system are discussed in Chapter III.

Federal Law Provides Wide Range of Corrective Actions for Long-term Care Facilities

One of L&R's key responsibilities is inspection of long-term care facilities under the HCFA contract. The Division enforces federal Medicaid and Medicare program standards for both long-term care facilities and for other types of health care facilities. Some facilities may have one or more levels of care, with each level having its own program standards. L&R enforcement is performed primarily through unannounced on-site surveys, or inspections, and through complaint investigations. When Division surveyors find deficiencies, the facility must respond by a certain date with a plan of correction for each deficiency.

On July 1, 1995, HCFA introduced a new long-term care survey process that reduces the discretion of the surveyors. Under the old "catch and fix" system, when surveys were completed, deficiencies were cited and corrections made. The new system allows zero tolerance, with no deficiencies, and is designed to bring facilities into compliance and not be punitive. Deficiencies can range from the less serious "A" to the most serious "L," as shown by the matrix grid in Appendix A. In addition, L&R has 11 remedies it may use to bring facilities back into compliance. The remedies range from training and directed plans of correction to fines and denials of payment for new admissions or for all residents. In addition, even more stringent remedies include the use of on-site state monitors, transfer of residents, facility closure and termination of the provider agreement. (For a description of these remedies, see Appendix B.)

Budget and Personnel

L&R's organizational structure changed in December 1996, according to a memorandum issued by the Division Director. The realignment creates Assistant Division Director posts and puts particular responsibilities under their supervision. The four regional offices are under direct responsibility of the Assistant Division Directors. Most of the one-on-one contact with facilities and services takes place at the regional level. Staff numbers are down in 1997 compared to 1996. The state hiring "cap" sets limits on how many people the Division may employ. Division funding levels are increasing, with federal dollars accounting for the bulk of outside appropriations.

Organization Includes Central, Regional Offices

L&R's top management consists of a Director and, as a result of recent action, two Assistant Directors. That action came about on December 2, 1996, when the Division Director announced a Division staff realignment, as shown in Figure 2.1. As of this date, formal approval by the Cabinet or the OIG has not been issued, although the Division Director said "the time has arrived to restructure the Division to make it more able to meet current and future challenges." The Division Director said L&R's structure "has remained largely unchanged for nearly 25 years."

Under the previous organizational setup (see Figure 2.2), the Division had five branches, which included the four regional offices, that enabled it to carry out its mission and functions. The Licensure and Certification branch was located in the Frankfort central office. L&R's four regional offices throughout the Commonwealth also were classified as L&R branches. The Licensure and Certification Branch was made up of five sections:

- Health Facilities and Services Section (responsible for certifying and licensing health facilities);
- Social Services Section (licensed day care and child care facilities);

- Complaints Review Section (received and reviewed complaints);
- Program Review Section (responsible for a broad range of support services); and
- Utilization Review Section (responsible for licensing utilization review agencies).

CHAPTER II

insert organization chart 2.1

g:/pubprot/l&r/flowch.pm5 chart 2.2

Under the new setup (see Figure 2.1), the two Assistant Directors are responsible for certain programs. The Regional Program Managers, who direct activities at the regional level, answer directly to the Assistant Division Directors. Under the new organization structure, one Assistant Division Director will oversee all activities concerning long-term care facilities, home health agencies, renal dialysis facilities, complaints and utilization review. The second Assistant Division Director will oversee other health facilities, child care, and program review and technical support.

The Division's four main regional offices are located in Hopkinsville, Louisville, London and Lexington. In addition to the main regional offices, there are six smaller satellite offices in Fulton, Harlan, Covington, Newport, Ashland and Prestonsburg. Regional offices are staffed by field surveyors, who inspect facilities and conduct complaint investigations, and secretarial support staff. Surveyors conduct facility site reviews within their regions; process new applications; provide a point of contact for providers; and supply education, consultation and assistance to providers. Finally, they are responsible for investigating complaints lodged against facilities in their regions, both private facilities and state-run institutions. Most of the survey-type activities, related follow-ups and complaint investigations are done at the regional level.

There are two groups of professional personnel working at the regional level, but the number is increasing to three. First, there are surveyors with various job titles who concentrate on licensing and certification work, along with investigating complaints. The Division Director recently authorized creation of regional teams who will spend the bulk of their time investigating complaints. The third group consists of dedicated child care surveyor positions established by the 1992 General Assembly. Currently, nine professional staff people and one clerical worker are dedicated to child care survey work, while one person administers the program at the central office level.

Division Staff Numbers Reduced to 168

According to agency figures, L&R's central and regional office staff complement (including unfilled vacancies) stood at 168 (Table 2.2) at the beginning of 1997, 13 fewer than the 181 in 1996 but up three from 1995. The Division had 11 unfilled vacancies at the central office level and in the regions at the beginning of the year, ten of those professional and one clerical. Employee numbers in the central office and the regions are either at comparable levels or down from 1996. The Division uses no contractual staff other than some temporary employees hired from time to time to handle excess clerical work and a personal service contract with a psychiatrist.

The ratio of professional to clerical staff is higher at the central office level (almost 5:1) than the regions, where the ratios range from almost 7:1 to 12:1. Central office staff concentrate more on support, while regional office staff, as noted previously, do the bulk of survey, license, certification and complaint investigation work.

Staffing levels are affected by the state hiring "cap," which limits the number agencies can employ. New hiring is limited by the cap. While the Division Director has the option of bringing personnel into L&R ranks through an internal mobility registry of current state employees, that option also is limited by the cap.

TABLE 2.2
Division of Licensing and Regulation
Authorized Personnel Positions and Staffing Patterns

	1995	1996	1997
--	------	------	------

	Professional	Clerical	Professional	Clerical	Professional	Clerical
--	--------------	----------	--------------	----------	--------------	----------

Central Office	28	8	28	12	28	6
Region A	29	5	32	5	32	5
Region B	27	5	32	5	26	4
Region C	21	4	21	6	22	3
Region D	35	3	36	4	35	3
TOTAL	140	25	149	32	143	21

1997 Staff Patterns	Professional Non-Day Care	Day Care/Child Caring Professionals	Clerical
Central Office	27	1	6
Region A	30	2	5
Region B	23	3	4
Region C	21	1	3
Region D	32	3	3
TOTAL	133	10	21

SOURCE: Compiled by Program Review staff from information received from L&R and from Department of Personnel data files.

State, Federal Funding Has Increased to \$8.3 Million Level

L&R is budgeted \$8.3 million for the 1996-1997 biennium to carry out its public protection duties. As Table 2.3 shows, the bulk of the Division's funding, over \$4.6 million in FY 1996-97, comes from the federal government for services rendered to HCFA. Federal funding has grown steadily through the years, from \$3.5 million in FY 1992-93 to the current budget level. General Fund contributions have risen modestly during that time period, growing from \$2.2 million in FY 1992-93 to the current level of

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\$2.6 million budgeted in FY 96-97. L&R also generates its own agency receipts, mostly from license fees charged to operate various types of health facilities and services in the Commonwealth. Agency receipts make up the smallest portion of L&R's budget, but have doubled in the last four years.

TABLE 2.3.

**Office of the Inspector General
Division of Licensing and Regulation
Expenditures By Fund Source, FY 1993 -- 1998**

Fund Source	Actual FY 1992 - 93	Actual FY 1993 - 94	Actual FY 1994 - 95	Actual FY 1995 - 96	Budgeted FY 1996 - 97	Budgeted FY 1997 - 98
General	\$2,189,400	\$2,257,200	\$2,387,500	\$2,645,300	\$2,554,000	\$2,758,000
Agency	532,000	553,900	593,500	757,000	1,119,200	1,129,400
Federal	3,510,200	4,492,400	4,015,400	4,121,300	4,604,600	4,754,600
Total	\$6,231,600	\$7,303,500	\$6,996,400	\$7,523,600	\$8,277,800	\$8,642,000

SOURCE: Cabinet for Health Services, Office of Personnel and Budget, 1996

CHAPTER III

LICENSING AND CERTIFICATION PROCESS

Licensing and certification activities -- two main functions performed by Division of Licensing and Regulation (L&R) personnel -- are increasing. At the same time, surveys have been backlogged in some regions, with some parts of the state, particularly West Kentucky, reaching critical levels, requiring the temporary diversion of some staff from other regional offices. Time and resource conflicts resulting from a staff trying to perform routine surveys and inspections while responding rapidly to complaints may be one cause. The regional configuration and distribution of workload may be other factors. HCFA has told the Division it needs to improve its survey timeliness and documentation of deficiencies performed by one of its subcontractors. The Division could improve its efficiency by maintaining and upgrading its computerization, and ensuring that regional offices have appropriate supplies. L&R has tried to deal with timeliness and provided training to its subcontractor.

A Federal Health Care Financing Administration (HCFA) official indicates that L&R has historically cited fewer long-term care deficiencies than other Southeastern states in Region IV and the nation as a whole. In 1995, HCFA evaluations show a 93 percent accuracy rate in identifying deficiencies, which HCFA feels needs improvement. Documentation and sampling problems also were cited. Ensuring that visits are unannounced, considering the impact of common facility ownership and achieving greater cooperation with other regulatory agencies could improve the process. At the same time, the Division and the state's long-term care ombudsmen need to improve their relationship. L&R indicates it is trying to address these issues.

Another problem is the nursing home rating system, which tends to be misleading to the public by its conditional or superior rating approach. Fines may not be a deterrent because collection takes so long, particularly at the federal level. The long-term care monitoring process, an option available under federal regulations, also needs to be strengthened.

Licensing and Certification Workload

Licensing and certification activities are increasing, with total related activities, excluding complaints, growing to almost 6,800 in 1996, according to L&R figures. Surveys have been backlogged in some regions, with some regions experiencing major problems. HCFA has noted that the Division needs improvement in areas of survey timeliness and the Fire Marshal's Office (a subcontractor) for documentation of deficiencies. Time conflicts from multiple responsibilities and the actual time needed for investigation or surveying are problems. Regional configuration may be another factor affecting the Division's ability to keep up. L&R has been taking actions to address these problems.

L&R Personnel Have State Licensing, Federal Certification Responsibilities

L&R personnel perform two functions in determining whether health facilities operate in the Commonwealth -- state licensing and federal certification under Medicare/Medicaid. Licensure means that the facility must meet the state's minimum standards prior to operation and the provision of services. Certification is perhaps the most important of the two because it is a recommendation made by L&R as to the compliance of providers and suppliers with the requirements for participation and conditions of coverage in the Medicare and Medicaid programs. Federal regulations call for state agencies like the Division of Licensing and Regulation to perform initial surveys and periodic resurveys of all providers and certain kinds of health suppliers. The surveys are conducted to determine whether a provider or supplier meets applicable requirements for participation in Medicare/Medicaid, and to "evaluate performance and effectiveness in rendering a safe and acceptable quality of care."

L&R personnel inspect thousands of health care facilities, health care operations, and day care and child facilities to ensure that they meet minimum health and safety standards. Site visit work involves some aspect of surveys geared to ensuring that minimum state and federal standards of care are maintained. Working in multidisciplinary teams, L&R workers perform one-to-three-day quality performance surveys and recommend whether facilities should continue participating in health programs, either at the state level or under HCFA provisions. At the same time, health facilities should be inspected yearly to maintain state licenses. Most surveys of nonaccredited hospitals and long-term care facilities are handled by a team of five to seven surveyors. Other provider surveys are conducted by one-to-three surveyors. As mentioned earlier, L & R personnel routinely investigate complaints forwarded to the Division through a variety of sources.

**Licensing and Certification Activities
Increasing**

Considering the health problems associated with an older population, coupled with the other vulnerable segment, children, it is vitally important that L&R stay current with its workload. But the agency has had a problem doing so in the past, and increasing activities apparently have played a part in that inability to stay current.

L&R's regional workload, as a ratio of facilities/inspector, seems to be spread out evenly over the four regions, although one has slightly more than others. The largest share of health facilities and services (other than day care) is in the Lexington region, where 838 are located, according to L&R figures. That is followed by 666 in the Hopkinsville region, 512 in the Louisville region and the fewest, 463, in the London region.

Just as the numbers of facilities and services are increasing, so are the licensing and certification activities, which have increased in three out of four regions. After dropping from 6,314 in 1994 to 5,974 in 1995, total licensure and certification activities jumped to 6,797 in 1996, as Table 3.1 shows. Region D (Lexington) had the most activities in 1996, 2,625, followed by Region A (Hopkinsville), with 1,762, Region C (London), with 1,291, and Region B (Louisville), with 1,119. Complaints visits also have increased, an issue that is discussed in Chapter IV.

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TABLE 3.1
DIVISION OF LICENSING AND REGULATION LICENSING AND CERTIFICATION INS
BY REGION FY 94 -96

	REGION A			REGION B			REGION C			REGION D		
SURVEYS	1994	1995	1996	1994	1995	1996	1994	1995	1996	1994	1995	1996
INITIAL	127	149	116	115	98	82	58	71	74	197	235	239
RESURVEY	871	705	1,137	934	846	767	586	540	742	1,434	1,505	1,654
FOLLOW-UP	157	137	149	154	121	68	212	283	268	375	275	375
OTHER	256	226	360	228	240	202	242	197	207	368	346	357
TOTAL	1,411	1,217	1,762	1,431	1,305	1,119	1,098	1,091	1,291	2,374	2,361	2,625

NOTE: Complaint visits are not included in table, because those are reported in a separate table in Chapter IV.

SOURCE: Compiled by Program Review staff from information received from Division of Licensing and Regulation.

Work Backlogged in L&R Regions

Surveys, as well as complaint investigations, have been backlogged in some regions, with a critical backlog occurring in the West Kentucky region (Hopkinsville) in 1995 and 1996. The Division does not deny that backlogs have existed in some regions. The Division handles federal surveys, complaint investigations and state licensing visits during the same annual visits to some facilities.

A Program Review analysis of L&R survey dates shows it is taking the Division longer, on average, to return to long-term care facilities for resurveys. Of those surveys reviewed, almost 14 months had elapsed, on average, between the most current surveys (most conducted in 1996) and the previous surveys. In many cases, the elapsed time was well above the 14-month mark. The prior survey cycle took an average of 13 months. The average cycle prior to that stood at an average of just over 11 months. Fourteen months is within the HCFA acceptable range of nine-to-15 months, but if the average continues to climb, the Division will be beyond that acceptable range. The increase in average time between long-term care visits also could affect state license visits, because those visits are required to occur annually.

The time it takes to conduct a survey can vary, because every facility is different and the tasks facing a survey team vary, depending on the quality of the facility. A surveyor in the London region told Program Review staff that long-term care and abuse investigations are the most time-consuming. The preparation time for facilities without deficiencies is much shorter.

The West Kentucky regional program manager (RPM) alluded to reasons that could have accounted for the backlogs -- travel distances in that region, requiring more surveyors on teams and even some overnight stays. While an average 100-bed nursing home can take three or four days, the RPM also said travel time has to be factored in. Further, longer periods of time were required for surveys under provisions of nursing home reform in the 1987 Omnibus Budget Reconciliation Act (OBRA87). "Really, this (OBRA87) is what put us so far behind. The paperwork is horrendous," she said.

The West Kentucky RPM said her office has caught up at times in survey and complaints processing, only to fall behind again. When backlogs rose from 300 to 700, emergency actions were taken. Outside typists were hired under contract to help catch up. That process had its problems, however, because some of the work contained clerical errors.

L&R's Director said in a later interview that it was her goal to have all four regions in the Commonwealth caught up in complaint investigations and survey processing by January 1997. One of the biggest obstacles to that goal was the West Kentucky office, which had a backlog of work still pending in 1996. At one point, she obtained permission to divert a major portion of the Division's survey staff to the region to catch up on complaint work. In a follow-up interview, she said they were "running dead even" in

Regions B (Louisville) and C (London), "making great strides" in Region A (Hopkinsville), but had some immediate jeopardy cases that affected work in Region D (Lexington).

Regional Configuration May Be Problem

The size and geographic make-up of some L&R regions may present a problem. Over 90 percent of Kentucky's counties fall within three regions (See Figure 3.1). The Hopkinsville and Lexington regions have 35 counties, or 30 percent, each. The London region has 38 counties, or 32 percent. The Louisville region has ten counties, or 8 percent. An L&R official said the former Cabinet for Human Resources established the regions in 1974, but the Division did not have input in the regional configuration process. The current boundary lines have been in effect since 1981.

Some regions, particularly the West Kentucky region, are large in area, requiring considerable travel time from one part of the region to another. Several regional staff members expressed concerns about the distances surveyors have to drive to conduct surveys, and having to respond to abuse or neglect complaints in state-run facilities. L&R staff said there has been talk of realigning the regional boundaries and creating a fifth region, but nothing has been formalized.

Routine, Non-routine Activities Compete for Staff Time

Surveyors in the regional offices have routine licensing and certification activities that occupy their time, but also must investigate complaints filed against facilities in their regions. According to a Cabinet official, L&R's dilemma is a time management problem caused by multiple responsibilities.

A significant conflict exists between completing routine activities and handling non-routine complaints on an immediate basis. For example, surveyors can be about to leave for a survey visit when they are diverted to investigate a complaint. "If you don't have a dedicated staff, you have a problem," he said. "It's a juggling process."

HCFA Identifies Need to Improve Timeliness Of Recertification Process and Increase Resources

In what are called State Agency Evaluation Program (SAEP) reports, HCFA stated that L&R and Department of Medicaid Services need to improve in the areas of survey timeliness and documentation of deficiencies. HCFA used the SAEP as a quality assurance tool, although it is being replaced with another performance tool, the State Agency Quality Improvement Program (SAQIP). The SAQIP is a continuous quality improvement plan using an L&R-HCFA team approach.

FIGURE 3.1 (iNSERT mAP)

Table 3.2 shows the portions of the 1995 SAEP which found L&R needed improving. The results of the 1994 and 1995 SAEP reports, which also contained acceptable areas, are presented in Appendix D. In FFY 95, L&R needed improvement in six out of 13 standards. HCFA said L&R did not meet the minimal workload requirements stipulating how often skilled nursing facilities and nursing facilities should be surveyed. The review indicated that some long-term care facilities were not resurveyed within the 15 months after the previous survey, as required by federal regulations.

TABLE 3.2**HCFA Finds Some Need For Improvement**

HCFA Standard	HCFA Finding	HCFA Recommendation	
CRITERION I Quality, Consistency and Outreach			
Implement and maintain a complaint investigation system*	Complaint investigation results are not reported in a timely manner. Three hundred and fifty (350) complaints in FFY 94 were not closed. This untimely processing of complaints was also a finding in the 94 SAEP review.	L&R must develop an effective system to assure that complaints are investigated timely.	Al br 1, Ti L& de
CRITERION II Fiscal Management			
State agency justifies expenditures and changes to federal programs by following regulations, policies and approved allocation methodologies.	L&R charged state expenses to federal funds. L&R charged complaints totally to federal programs. State license inspections were charged to federal programs in several cases reviewed. Noncertification functions are charged to the survey and certification grant.	Revision of written policies and procedures on time validation records is needed. L&R needs training for surveyors. L&R needs a monitoring system for maintenance of time validation records.	L& tin St: A de

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HCFA Standard	HCFA Finding	HCFA Recommendation	
CRITERION III Survey, Process and Systems Management			
Standard surveys for home health agencies, skilled nursing facilities and/or nursing facilities are conducted within required time frames	L&R failed to meet minimum workload requirements for survey frequency of long term care facilities. There is a nine to 15 month window in which surveys must be done.	L&R needs resources to meet minimum workload requirements. L& R needs staff and computer resources. L&R needs to improve scheduling.	TL di st ce L th N w
Intermediate care facilities/mental retardation recertifications are not being completed prior to the expiration of time limited agreements	Recertifications were not conducted before the expiration of the time limited agreement. In FFY 95, four of the mental retardation facilities operated without a provider agreement for some time, in violation of federal regulations.	L&R should develop a system to ensure that resurveys are completed prior to the end of the TLA and that there is adequate time for Medicaid to process them. L&R should develop a follow-up system with Medicaid to ensure that the TLA does not expire.	A re de

HCFA Standard	HCFA Finding	HCFA Recommendation	
CRITERION IV Evidentiary and Procedural			
Proper documentation of deficiencies*	L&R is not properly documenting life safety code deficiencies	Training should be provided to surveyors in using the principles of documentation when writing deficiencies.	T I s c c r p l
CRITERION V Federal Monitoring Surveys			
HCFA and L&R findings for long- term care facilities on resident assessment, urinary incontinence and restraint use are consistent	Federal surveyors found deficiencies in the areas of resident assessment, urinary incontinence and restraint use which were not found by L&R surveyors. The accuracy rate was 93%. L&R improved in data collection skills.	HCFA surveyors will conduct surveys alongside state surveyors as often as possible, to support and guide L&R surveyors.	I a F

*A continuous quality improvement plan (SAQUIP) has been implemented for this standard.

SOURCE: Compiled by Program Review staff from HCFA SAEP report for Federal Fiscal Year 95.

HCFA said L&R needed more resources to meet minimum workload requirements, needed staff and computer resources and needed to improve scheduling. L&R responded that the state's personnel cap made it difficult to procure more staff and that it was requesting a cap increase. The Division said new computer equipment would be purchased.

In the case of ICF/MRs, HCFA found that the recertification process was not conducted before the expiration date of the limited time agreement. HCFA recommended:

1. In Kentucky there are nine (9) certified ICF/MR, of which three were included in the review sample. In two of the cases reviewed the recertification actions were not completed before the expiration of the time-limited agreement (TLA). The Survey Agency was untimely in processing one of the two cases. A review of all of the ICF/MR facilities certified indicated that the State Title XIX Agency is consistently letting TLA expire. In FY 1995, four ICF/MR operated for a period of time without a provider agreement, in violation of Federal Regulations.

The federal agency recommended that:

1. The State Agency should develop a system to assure that resurveys are completed prior to the end of the TLA and adequate time is provided to allow the Title XIX Agency to process the TLA. . . . A system should be developed by the Survey Agency to follow-up with the State Title XIX Agency when a TLA is about to expire.

As discussed previously, meeting timelines continues to challenge the Division. The Inspector General and Division Director attribute these problems to having inadequate staffing and both have said they need additional staff. The Inspector General has stated that L&R would need a significant increase in staff resources to eliminate the overwork problems. The Division has pointed out that it is affected by the state employee cap. A corrective action plan indicated that the cap was placed on the agency by the Governor's Office for Policy and Management and the Cabinet for Health Services. The agency was currently at cap, according to the corrective action plan.

The Division Director told Program Review staff that she was attempting to reduce survey team sizes, limiting teams to six members, and aiming for four-person teams, in an apparent attempt to get more done with fewer people. She added that two-person surveys could be conducted on some 60-bed facilities. In the case of the Western Kentucky region in particular, the changes were contemplated to help the region catch up.

Additional personnel considerations may further affect the Division's ability to meet minimum workload requirements. Employee hours actually spent on the job may be

a crucial factor in establishing how the Division must meet the minimal workload requirements. Many Division employees have over 20 years of service, which entitles them to 21 days of leave time per year, as opposed to 12 days for employees with five years. In addition, Cabinet policies requiring the use of compensatory time rather than overtime pay may increase actual leave time taken. Interviews with the Inspector General and Division Director indicate that these leave time effects are not considered when preparing the budget request or estimating personnel needs. The Division should conduct an extensive analysis to determine how these factors affect the Division's ability to achieve the federal minimal workload standards.

As an alternative, the Division has the option of hiring temporary workers via the annual HCFA budgetary process, discussed in Chapter V. If the need arises, HCFA will fund the hiring of consultants and subcontractors to perform services. L&R could augment its personnel ranks by taking that step.

Computerization and Use of Pre-printed Forms Could Save Time, Improve Efficiency

At least two changes could help Division personnel improve their job performance and save time:

The Division could benefit from further computerization. Computerization would allow faster storage and use of data and the rapid exchange of information between state and federal government systems. More computer linkages are needed between the central office and regional offices. The central office is linked by computer to HCFA. Even though management has indicated there is no lack of electronic communication between L&R and either the federal government or its regional offices, regional staff say they need additional computer equipment, as well as maintenance on existing equipment. Surveyors indicate there are untimely lapses between equipment failure and repair, requiring them to revert to manual functions. Most indicated a desire for additional functional computer equipment.

Further computerization at the regional office level would cut down on the amount of paperwork. Surveyors spend considerable time compiling and reviewing paper files of previous findings before visiting a facility. Such information could be accessed readily, as needed, if more documentation were stored electronically.

A top-level Region IV HCFA official said the agency provides money to states to computerize their survey operations. He said Kentucky has some ability to communicate by computer between regions, as the Inspector General noted in a separate interview, but additional computerization could be put in place that would enable regions in the state to "even download and send files straight to us."

While the Division has been operating without the benefit of full computerization, it has been working to develop its computer resources and continually develop its

electronic transfer processes. The Division Director noted that the recent budget allocated about \$80,000 for equipment. L&R was able to make "a mass computer buy," she said, with each regional office getting four new computer terminals.

Because time is a key, the Division should ensure that regions utilize pre-printed forms. For example, during a visit to the London office, Program Review staff members noticed regional staff members copying HCFA forms for use. Those same forms were readily available from the central office in pre-printed form, originating from the U.S. Government Printing Office in Washington. One regional staff member said this process was commonly done and that it took over an hour to copy the forms. Upon learning this, a management person in the region called the Assistant Director and was told these forms were, in fact, in supply and would be shipped to the region immediately.

RECOMMENDATION #1: Analyze Staff Needs, Distribution

L&R should conduct a staff-time analysis that takes all factors related to workload distribution into account. The analysis should consider:

- **Such factors as personnel numbers and job duties, workload, leave time, and travel;**
- **Alternatives to employing full-time state employees;**
- **Efficiency improvements from a realignment of regions, changes in team sizes, computerization, and training; and**
- **Impact changes will have on quality, ensuring that quality is not sacrificed.**

Survey Process Problems

Federal Health Care Financing Administration (HCFA) figures show L&R consistently cites fewer long-term care deficiencies than other Southeastern states in Region IV and the nation as a whole. HCFA evaluations show unacceptable error rates in identifying deficiencies, documentation and sampling. Ensuring that visits are unannounced, considering common facility ownership and its impact, and greater cooperation with other regulatory agencies could improve the process. At the same time, the Division needs to improve its working relationship with long-term care ombudsmen.

**L&R Cites Fewer Long-term Care
Deficiencies, HCFA Finds Accuracy Rate
Unacceptable in 1995**

According to a Region IV HCFA official, L&R historically cites fewer deficiencies in long-term care facilities than the other Southeastern states in the region. Table 3.3 shows where Kentucky stands compared to other states. Why is this state lower than other states in the HCFA region? A HCFA official said it would be difficult to make that assessment "without hard data from the other side." For example, he said one state might have better facilities than another. He said HCFA has never done such an analysis, but "we know historically that Kentucky has cited fewer facilities in the region." HCFA reviews for 1995, however, state that L&R needs training in investigation techniques and data collection and analysis to enable the surveyors to cite deficiencies better.

Federal survey results, as of November 1996, comparing states within the region show Kentucky is below the regional and national averages in each of ten most cited deficiencies. Seven of these are potential substandard quality of care deficiencies. In fact, with the exception of Georgia, and a few specific program areas, Kentucky is lower than any other state in citing deficiencies for substandard quality of care. (see Appendix E).

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TABLE 3.3

TOP TEN CITED DEFICIENCIES IN THE HCFA REGION AND TH

	AL	FL	GA	KY	MS	NC	SC
Total Facilities	217	687	302	312	137	394	172
Comprehensive Residents Assessments	97 44.70%	196 28.53%	30 9.93%	48 15.38%	41 29.93%	64 16.24%	45 26.16%
Store/Prepare/Disturb. Food Under Ban	51 23.50%	155 22.56%	79 25.83%	33 10.58%	28 20.44%	75 19.04%	51 29.65%
Develop Comprehensive Care Plans	92 42.40%	209 30.42%	3 0.99%	44 14.10%	26 18.98%	50 12.69%	49 28.49%
Dignity*	30 13.82%	133 19.36%	30 9.93%	19 6.09%	19 13.87%	75 19.04%	39 22.67%
Right To Be Free From Physical Restraints*	50 23.04%	144 20.96%	10 3.31%	35 11.22%	8 5.84%	42 10.66%	47 27.33%
Appropriate Treatment for Incontinence*	42 19.35%	106 15.43%	13 4.30%	22 7.05%	10 7.30%	54 13.71%	52 30.23%
Proper Treatment to Prevent/Heal Pressure	44 20.28%	98 14.26%	26 8.61%	22 7.05%	19 13.87%	37 9.39%	40 23.26%
Drug Regimen is Free From Unnecessary*	35 16.13%	85 12.37%	9 2.98%	16 5.13%	11 8.03%	59 14.97%	41 23.84%
Facility is Free of Accident Hazards*	36 16.59%	62 9.02%	47 15.56%	9 2.88%	32 23.36%	30 7.61%	34 19.77%
Housekeeping & Maintenance Services*	11 5.07%	62 9.02%	48 15.99%	18 5.77%	37 27.01%	54 13.71%	11 6.40%

* Denotes substandard quality of care deficiencies.

Source: OSCAR system, contains data for long-term care facility surveys conducted before November 1996.

HCFA criticized deficiency documentation with regard to life safety code deficiencies in the 1995 SAEP report. The 1995 SAEP showed comparisons between federal inspectors and state inspectors conducting simultaneous inspections. It indicated Kentucky surveyors have a 93 percent accuracy rate, as shown by Table 3.2. HCFA indicates this standard needs improvement. The 1995 SAEP review found problems with the proper documentation of life safety code deficiencies in long-term care facilities. The state survey agency, the Office of Inspector General, has delegated these life safety code responsibilities to the State Fire Marshal's Office. The OIG, as state survey agency, still maintains responsibility to ensure that contract responsibilities meet federal requirements. L&R and HCFA provide training to the state Fire Marshal's Office. L&R indicates that the performance of the Fire Marshal's Office has improved.

The more recent state SAQIP report, an internal L&R quality assurance report required by HCFA, indicates the Division is failing to properly define the deficient practice and the scope and severity of the deficiency. Further, the report found that surveyors are not selecting the appropriate residents for sampling. That mistake affects a surveyor's ability to determine whether a deficiency exists. Also, concerns with investigative techniques and data analysis still exist. Investigative techniques involve determining whether deficiencies exist by asking certain key questions. Data analysis entails being able to determine whether deficiencies exist based on information gathered. Both skills depend on adequate training of staff. HCFA training in October 1996 focused on investigative skills and data analysis. On-site training was scheduled for certain regions. L&R submitted to HCFA a plan for improvement in fall 1996. In a quarterly status report submitted in January 1997, L&R indicated that, of 55 deficiency statements reviewed, 97 percent were acceptable.

Need to Ensure That Inspections are Unannounced and Less Predictable

L&R needs to maintain, as a high priority, efforts to keep long-term care facility visits unannounced, as mandated by both state and federal law for all health facilities except hospitals. According to federal regulations, L&R must inspect long-term care facilities no less than nine months after a standard survey and no more than 15 months later. The statewide average should be 12 months, although the average appears to be increasing, as noted earlier. Giving the Division a six-month window within which to conduct a standard survey should reduce the predictability of the visits.

In 1994, at least two regions routinely announced initial facility visits, although Division management vigorously denied that prior announcement is taking place now. According to the 1994 HCFA SAEP report, interviews and file reviews by the federal agency revealed that two regional offices announced initial surveys for long-term care facilities. Employees in the offices said they believed such announcements were statewide policy. L&R corrected the misunderstanding. The 1995 SAEP report indicated that L&R's performance on that standard was acceptable. L&R is actively seeking amendment to regulations to make hospital visits unannounced.

However, some problems may still persist regarding unannounced visits. An ombudsmen said a long-term care facility attached to a hospital may receive advance notice because its companion hospital visits are always announced. Program Review staff also were told that motels and other sources contact nursing homes if surveys are pending. A mix-up in scheduling a state Fire Marshal's life safety code visit also has alerted at least one facility about a pending survey. According to the L&R Director, officials with the Fire Marshal's Office try to go on the second day of the survey. However, in the case of a problem Elizabethtown nursing home, the Fire Marshal's Office came the day before the survey began.

Ombudsmen indicate that L&R surveyor schedules are predictable; therefore, many nursing home operators have a sense of when they will be surveyed. For example, the standard surveys for the last three years have always been conducted in September at the Elizabethtown nursing home which had problems in the past. The Inspector General acknowledges that, even though L&R has the window of nine-to-15 months to resurvey facilities, there is still some indication when surveyors will be at a facility. As a result, L&R is trying to visit off cycle, at nights, and on weekends.

Enforcement Strategy Should Include Common Ownership of Nursing Homes

Common ownership of long-term care facilities should be taken into consideration in L&R's enforcement planning. Several companies operating in the state own more than one long-term care facility. One company has had repeated major violations in at least two of its four facilities, including deaths, severe care problems and major breakdowns in air conditioning and food service. Indiana requires consideration of the past track record of companies that own long-term care facilities before letting them add a new facility.

L&R also should consider enforcement strategies which include conducting surveys and investigations simultaneously in more than one facility owned by the same company. Inspecting commonly owned facilities at one time would prevent a corporation from shifting employees from other facilities to cover up lack of personnel at the inspected facility. Some field surveyors in the Lexington region indicate they have no knowledge of facility ownership or problems in sister facilities. Simultaneous inspection would probably require coordination at the regional and central office level, because the facilities may be in different regions. Family members of a resident of a problem nursing home in Lexington surveyed in July 1996 said they believed staff were being brought from other facilities owned by the same company to make it appear staffing was adequate at the one being surveyed.

RECOMMENDATION #2: Strengthen Survey Process

L&R should continue to improve the quality of the survey process by:

- **Continuing to ensure that nursing home inspections are unannounced and unpredictable;**
- **Considering common ownership of nursing homes by reviewing problems in related facilities and ensuring that resources from one facility are not used to temporarily bring another into compliance; and**
- **Ensuring that regional managers and inspectors are following procedures that ensure quality rather than increasing speed or numbers of inspections.**

More Cooperation Between Oversight Agencies Can Improve Surveys

To be more effective, L&R surveyors need greater access to the findings of others who routinely visit nursing homes. Included in this group are agencies that conduct chart reviews, assessments and audits, ombudsmen who serve as advocates for the elderly in nursing homes, and other regulatory agencies. Some of these groups review similar patient records and assess residents; thus there is a need for routine information sharing and the need to consider more joint inspections. However, that is not occurring at this time.

Information sharing and communication should include reports, reviews and audits. Because several groups review similar aspects of long-term care facilities, these groups need to coordinate their work and share information. The following groups perform services that can overlap:

Surveillance and Utilization Review Branch (SURS)	RNs and physician consultants perform patient chart reviews and audit ancillary claims (services beyond the per diem rate) in nursing homes and charges in hospitals.
Quality Assurance Branch (QA)	Nurses perform chart reviews to monitor the Peer Review Organization's (PRO) performance of contracted duties. (The reviews exclude assessment of the appropriateness of therapy and the adjustment of case mix scores.)

**Peer Review
Organization (PRO)**

RNs certify the placement of Medicaid recipients in appropriate levels of care and perform quarterly assessments in nursing homes.
(They perform chart reviews based on facility nurses' notes and other documents, and conduct face-to-face patient evaluations.)

**OIG Division of
Audits (DOA)**

Auditors conduct retrospective audits of providers, and cost report reviews.
(The auditors review charts during testing of the facility's billing mechanisms.)

In its 1993/94 "Report on Nursing Home Ancillary and Hospital Outpatient/ER Services," the Office of Inspector General (OIG) recommended joint audit/investigations or surveys with SURS, PRO, L&R and the Division of Audits (DOA). The audits could include chart reviews and face-to-face assessments of patients on a sample basis, the report said, and should be performed by PRO nurses and SURS nurses to compare with L&R survey results. Cabinet officials conducted one meeting in an attempt to set up the process, but no formalized results occurred. The Inspector General (IG) said that changes in the billing process have addressed the ancillary service utilization problem. According to the OIG, both cabinets' (Health Services and Families and Children) databases are available to the OIG and information sharing occurs on an "as needed basis." The IG indicated the DOA receives information from the surveyors prior to conducting their audits. Additionally, PRO representatives may refer complaints to L&R for investigation. Some L&R surveyors interviewed indicate that, even when PRO staff members are in the facilities at the same time as L&R, the two groups do not get together and share information. One surveyor who has extensive knowledge of the work of the PRO said information sharing would be highly beneficial. The skills, knowledge and variations in visits between the organizations would add more monitoring and oversight. In some cases, cooperative visits might reduce duplication and costs.

**L&R Needs To Inform Ombudsmen
Throughout the Survey Process**

Long-term care Ombudsmen complain that L&R does not adequately inform or consider their input in the survey process. This practice varies across regions. Some surveyors said they have good relationship with the local ombudsman, while others do not.

The ombudsmen, mandated under the Older Americans Act, serve the following functions:

- Investigate nursing home residents' complaints and seek solutions;
- Serve as advocates for the residents;

- Monitor the development and implementation of federal and state long-term care laws; and
- Involve the community in nursing homes.

Structurally, the Office of State Long-term Care Ombudsman is located in the Department of Social Services (DSS), Division of Aging Services. The State Long-term Care Ombudsmen (LTCO) is responsible for the regional and local ombudsmen. There is a local ombudsmen for each area development district throughout the state.

Under federal law, surveyors interact with ombudsmen throughout the survey process. As part of the off-site preparation, the surveyor must review all the files for information concerning the ombudsmen at that particular facility. As part of the entrance conference, the surveyors must contact the ombudsmen and inquire whether complaints exist, obtain a description of the complaints, and determine whether the complaints have been validated. Surveyors are supposed to request recommendations from ombudsmen about residents and family members for possible inclusion in the sample and closed record review. Ombudsmen also have the right to be present at resident interviews without staff. Additionally, the surveyors are supposed to invite the ombudsmen to observe the exit conference. These practices are designed to make the ombudsmen an integral part of the process.

Currently, there is an interagency agreement between the LTCO and L&R which requires both agencies to investigate problems or complaints and to enhance the quality of care of the residents. L&R is required to:

- Assist ombudsmen in periodic training of community ombudsmen;
- Investigate and resolve written complaints or problems;
- Provide a written summary of actions taken within a reasonable time, not to exceed 30 days from date of final action;
- Check the posting of the ombudsman poster in long-term care facilities;
- Update the state LTCO on changes in federal and state regulations, policies, procedures, and guidelines;
- Provide appropriate records to specific requests submitted in writing;
- Provide resource material, as considered appropriate, concerning long term care to state LTCO;
- Refer appropriate inquiries or requests for information;
- Notify the LTCO of negative action proceedings against facilities; and
- In the process of assessing quality of care ratings, review and consider information received from LTCO.

According to several ombudsmen, L&R staff often fail to notify them or give them short notice about pending surveys and entrance conferences and fail to tell them about exit surveys. Interviews with local ombudsmen reveal that in certain area development

districts, the local ombudsmen are not routinely informed about exit and entrance conferences. Ombudsman said they received minimal notice (one day) of the survey and no notice of the exit surveys. The exit survey is particularly important because the administration receives information about deficiencies at this time. In some cases, ombudsmen report that there are pre-exit conferences with top level administrators and the ombudsmen are not really informed of the findings. At least two ombudsmen said that L&R does not give much importance to input from residents and their families.

Some local ombudsmen recommend that L&R surveyors be present to evaluate all three shifts. Frequently the night shift, generally 11 p.m. to 7 a.m, is not even looked at. Finally, the ombudsmen need to receive both the statement of deficiencies and the relevant plans of correction in a timely manner. When revisions and modifications are made, they should be immediately notified.

The State Ombudsman said his agency has trouble getting access to survey results and plans of correction. He said ombudsmen have sought some survey results from L&R, but have been put off, with Division officials saying the surveys are still pending. He said federal law stipulates that survey results are to be made public 14 days after release to the facility. But "what L&R does is deny public access to surveys until they are complete," he said.

L&R has been working on establishing a new interagency agreement with the State Long-term Care Ombudsman for over a year. For the last six months, according to the State Ombudsman, there has been virtually no progress in this area. According to the Inspector General, confidentiality issues are delaying signing of the agreement. Because some of the local ombudsmen are not employees of the two cabinets, they are contract employees who work for the area development districts, the OIG is unwilling to give them lists of the dates for unannounced visits in long-term care facilities.

The State Ombudsman, however, said confidentiality is not the issue. Not only do ombudsmen have safeguards to assure confidentiality, he said, but federal law gives ombudsmen the right to have access to a list of pending surveys. The State Ombudsman said L&R officials told him in meetings on the subject that the lists could not be provided because the central office does not have them; rather regional offices have them.

RECOMMENDATION #3: Information Sharing Desirable

The Cabinet should look internally, as well as externally, to establish procedures for cooperative reviews and open sharing and exchange of information among agencies or other Cabinets with overlapping facility responsibilities. The Office of Inspector General should ensure compliance with policies requiring that inspectors contact, and review files from long-term care ombudsmen and also performing enforcement functions in Kentucky long-term care facilities.

Enforcement Concerns

The nursing home rating system used by the Division could mislead the public, since it has only three categories and problem nursing homes can be rated "superior" immediately after having a "conditional" standing. The long-term care monitoring process also needs to be strengthened. Finally, nursing home fines may not be a deterrent, since collection takes so long. L&R is looking at alternative rating processes and is reviewing the monitoring visit process. To speed the fine process, the Division is pursuing state fines, rather than waiting for federal action to be completed.

Long-term Care Facility Rating System Fails to Inform the Public

L&R evaluates each long-term care facility during the annual licensure visit, but the resulting ratings do not adequately inform the public. Three ratings are possible, as shown by Table 3.4. At least 83 percent of all facilities had a superior rating on August 30, 1996. Even the L&R Director said she has misgivings about the rating system.

When a facility receives a Type A or B citation (serious or life-threatening problems), it gets a "conditional" rating until all deficiencies are corrected within the approved period. However, the rating changes immediately after all deficiencies are corrected through an approved correction plan. At that point, the facility is then classified as "superior" again.

TABLE 3.4
Kentucky Rating System for Long-term Care Facilities

Rating	Description
Superior	Exceeds minimum standards in a majority (six) of the ten areas and meets the minimum standards for the remaining four areas. The areas are administration, nursing service, dietary and nutritional services, life safety code, physical and restorative therapy, social services and activities, drugs and biological, medical services, patient rights and record keeping.
Conditional	Not in compliance with minimum standards. Rating lasts from time of inspection until the facility is found in compliance with minimum standards.
Unrated	Meets but does not exceed minimum standards.

Source: KRS 216.550-553.

Other states have had problems with similar rating approaches. Alabama, North Carolina and Tennessee do not use a rating system. Only one other state in the Southeast region, Florida, uses a rating system. Approximately 75 percent of the nursing homes in Florida are rated superior. According to a Florida agency official, that state's system is not very effective. He said there is "rating inflation" and the system does nothing more than

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serve as a marketing tool for the nursing homes. Florida may eliminate its rating system, the official said.

In Texas, there were complaints that the rating system was not accurate and that facilities with substandard care received superior ratings. Now, instead of a rating, citizens requesting information receive the surveys for the last two years and a listing of the deficiencies.

Two examples illustrate the problems with the nursing home rating system in this state. Even though cited for multiple deficiencies, including serious pressure sores, a Lexington nursing home given a conditional rating in a July 1996 survey, was able to regain a superior rating in only a few weeks after correcting the deficiencies. An Elizabethtown nursing home has moved up and down in L&R's rating system. In October 1994, the nursing home lost its superior rating after being cited for 63 deficiencies. That also was during a time when the state Attorney General's Office and Hardin County Coroner investigated controversial deaths at the facility. By January 1995, the nursing home once again achieved a superior rating, although the Cabinet for Human Resources (CHR) had launched yet another investigation at the nursing home. In November 1995, CHR fined the nursing home \$15,000 in connection with air-conditioning problems experienced the previous August. Even as recently as August 1996 the nursing home received a superior rating after having a conditional rating.

RECOMMENDATION #4: Improve Enforcement, Compliance

The Office of Inspector General, using its own administrative authority, should develop options to the long-term care rating system, such as a regional rating guide, which reports all facilities and a historical description of inspection and complaint results. L&R should ensure that the public has open and ready access to completed surveys in line with federal requirements and should consider informing local newspapers of inspection results. It also should review processes and procedures related to the state monitoring process and the collection of state fines.

RECOMMENDATION #5: Repeal Long-term Care Rating System

The General Assembly should repeal the current long-term care facility rating system contained in KRS 216.550-553 and require that the Cabinet annually provide the public with meaningful and easily understood consumer information about the status of facilities.

Fines for Nursing Homes May Not Be a Deterrent Because of Collection Problems

Collection of state and federal fines for long-term care facilities takes a long time, thus reducing the value of fines as a deterrent. Since July 1, 1995, L&R has recommended and HCFA has assessed seven civil monetary penalties, but only one has been collected, as shown in Appendix B. According to Cabinet officials, a Hart County nursing home paid approximately \$4,000 as a civil monetary penalty. Of that amount, the state Medicaid program received \$3,818, which can be used only to transfer residents from the facility. Many of the federal fines are in the appeals process, which is greatly hampered by the lack of judges to hear appeals. Currently, there are only three federal administrative law judges to hear appeals for the entire nation. The collected fines are not paid until the appeals are finished. Therefore, fines may not prove to be the deterrent that they could be.

On the state level, L&R assessed and collected fines for the last three years as shown in Table 3.5. The number of state fines levied in 1996 was 15, in 1995, and in 1994, ten. L&R assessed \$114,000 in FY 96, an increase of \$36,000 over FY 94.

Problems with Monitoring Process Need To Be Reviewed

When a state survey or complaint investigation finds deficiencies of serious and immediate threat to patients, L&R can require action and monitor implementation. A state monitor oversees the correction of deficiencies specified by HCFA or the state survey agency at the facility site and protects the facility's residents from harm. A state monitor must be used when a survey agency has cited a facility with substandard care deficiencies on the last three consecutive standard surveys. State monitoring is discontinued when the facility has demonstrated that it is in substantial compliance with the requirements and, if imposed for repeated instances of substandard care, will remain in compliance for a period of time specified by HCFA or the state, or termination procedures are completed.

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TABLE 3.5
STATE FINES FOR LONG TERM CARE FACILITIES

Long Term Care Facility	1994		1995		Assessed Fines
	Assessed Fines	Amount Collected	Assessed Fines	Amount Collected	
Skilled Nursing Facility/ Nursing Facility	46,000	35,600	65,000	5,000	70,000
Personal Care Home	16,500	16,500	16,000	11,000	39,000
Family Care Home	15,000	None	5,000	None	5,000
TOTALS	\$78,000	\$52,000	\$86,000	\$16,000	\$114,000

Source: Compiled by Program Review staff from data supplied by L&R.

Monitoring at a Lexington site had questionable results. The facility had a history of problems and was assigned state monitoring to prevent further decline in quality of care related to patient harm. Five L&R staff members were assigned to monitor the implementation of the plan of correction and to determine when the facility was in substantial compliance with requirements. A monitoring team had been on site when, on August 23, 1996, the facility was determined to be in substantial compliance with requirements. According to family member complaints, on August 24 and 25, the facility developed more problems. In a resident/family meeting the facility administrator confirmed that the facility experienced major problems with staffing, food and other life-threatening situations on those days.

The above situation raises the question why, in a 24 hour period, after extensive monitoring, such problems would occur. Some experienced L&R surveyors interviewed about the situation felt such a situation would be highly unlikely if the facility was in substantial compliance with requirements at the end of state monitoring.

Other questions persist concerning this state monitoring and related follow-up. L&R records indicate that five staff members were part of the state follow-up survey; however, one staff person listed as a team leader indicates she was on leave at the time. Another team member became an employee of the facility immediately after the state monitoring, which could indicate a conflict of interest. The Inspector General has indicated his concerns about conflicts of interest and said that legal counsel was exploring possible solutions.

Finally, one surveyor on the team reported through supervisory channels an allegation regarding concerns about the level of compliance achieved in the facility and the identification of all problems. Program Review staff members were unable to confirm this allegation. The Inspector General said his own review showed the surveyor allegation resulted from a joking comment. The extent to which the unconfirmed allegation affected the quality and effectiveness of the monitoring is unclear. However, the fact remains that significant problems developed within less than 24 hours after completion of the intense monitoring. An internal review might uncover problems with the process that could lead to improvements.

RECOMMENDATION #6: Improve Complaint Investigation Process

The Division should assure close central office monitoring of the complaints investigation process from the initiation to closure of complaints. L&R should:

- **Ensure that complaint investigations begin with a physical presence, not a telephone call, within the maximum timeframes;**
- **Establish maximum timeframes for completing investigations and addressing complaints;**

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- **Consistently monitor compliance with these timeframes; and addressing**
- **Conduct post-investigation reviews for ensuring compliance and training requirements.**

CHAPTER IV

COMPLAINTS INVESTIGATION PROCESS

As licensing and certification activities are on the increase, so are complaint investigations undertaken by the Division of Licensing and Regulation (L&R). Until March 1997 the Division was responsible for investigating abuse and neglect complaints lodged against state facilities. Currently, the Division's responsibility in that area involves determining regulatory compliance in relationship to state licensure standards and the Health Care Financing Administration (HCFA) contractual agreement. The Division has had and still retains some regulatory responsibilities in complaint investigations conducted under state and federal law in private facilities. L&R is required to examine complaints on a timely basis, but has had problems doing so. There are dangers in failing to investigate complaints promptly, including the fact that victims' and witnesses' memories fade, evidence may get lost and relevant parties may be difficult to locate. As time elapses, L&R will have more difficulty investigating.

Outside agencies have criticized the Division for its complaint investigation timeliness. The Division readily admits it has problems. L&R is trying to improve its track record in that area, developing a draft handbook which includes a system of prioritizing complaints and forming complaint investigation teams.

Some ombudsmen say they have problems obtaining information about complaints they file with L&R. While improving in that area, the Division also should follow up with law enforcement and prosecutors in cases where complaints indicate criminal activity.

Timeliness

As licensing and certification activities are on the increase, so are complaint investigations undertaken by the Division. Until March 1997 the Division was responsible for two types of complaints, abuse and neglect complaints lodged against state facilities, and regulatory complaints filed against facilities and services. But some changes have taken place. L&R is required to examine complaints on a timely basis, but has had

difficulty complying. Outside agencies have criticized the Division for its complaint investigation timeliness. L&R is trying to improve its track record in that area.

Complaint Investigations Increasing in Regions; Investigation Process Time-consuming

Just as licensing and certification activities are on the increase, so are complaint investigations undertaken by the Division. L&R complaint activities are on the rise in three of the four regions. As Table 4.1 shows, in FY 96, the Division investigated 3,115 complaints, up from the 2,754 in FY 95 and 2,518 in FY 94. Complaints declined in Region B from 1995 to 1996 but increased in the other three regions.

**TABLE 4.1
COMPLAINTS INVESTIGATIONS**

	1994	1995	1996
REGION A	638	629	805
REGION B	658	739	643
REGION C	286	427	572
REGION D	936	959	1,095
TOTALS	2,518	2,754	3,115

Source: Compiled by Program Review staff from data supplied by L&R.

L&R indicated that the complaint investigation process can be time-consuming. According to the Office of Inspector General (OIG), one complaint alone can require 30 or more staff hours to complete. Investigating a complaint can involve, intake, travel to facility, investigation (one-to-four days), telephone interviews, regional office review, typing, Central office review, preparation of letters and forms, counsel review, referral to other agencies, and open records activities. The L&R Director said:

The complaint timeliness problem has been exacerbated by the increase in the time necessary for Medicare recertification of long-term care facilities. The increased complexity of the certification process has mandated that more staff time be devoted to recertification surveys. The number of staff allocated to the Division has not been increased in response to this increase in responsibility.

L&R Required to Investigate Complaints On a Timely Basis

Division personnel have dual duties, 1) conducting state licensure visits and complaint investigations, and surveying or inspecting, and 2) investigating complaints in Medicare/Medicaid certified health facilities and services. Until recently, the Division also investigated abuse and neglect complaints lodged against state-run facilities. Currently,

the Division's responsibility in that area involves determining regulatory compliance in relationship to state licensure standards and the HCFA contractual agreement.

Originally CHR delegated to L&R responsibility for state facility investigations, to avoid any potential conflict of interest in investigating abuse and neglect in Department for Social Services (DSS) facilities. By statute, DSS is the lead agency for child and adult abuse and neglect investigations. KRS 620.040 requires that allegations of abuse and neglect be investigated within 72 hours, although investigations of allegations of "dependency" must occur within 48 hours. Another statute, KRS 209.020, offers protection to children and adults, but has no time frames set out to respond to complaints. Abuse and neglect charges require intentional acts, while "dependency" occurs because a parent may not know about proper diet or hygiene, but does not intend to harm the child.

A memorandum of understanding (MOU) between DSS and the OIG, first signed in 1981, assigned responsibility for abuse and neglect investigations in state mental retardation and psychiatric facilities to L&R, and set time frames for investigating incidents. However, that investigation responsibility has shifted back to DSS.

The MOU established time frames for beginning abuse investigations for children and adults. However, neither the statutes nor the MOU set time frames for the completion of the investigation or minimal requirements for what must be included in the investigation. The time frames are shown in Tables 4.2 and 4.3. These guidelines are the criteria for evaluating the timeliness of L&R's performance.

TABLE 4.2
DSS/L&R Memorandum Of Understanding
Time Frames for Child Investigations

TYPE OF REPORT	TIME FRAME
Reports indicating imminent danger	Begin within the hour
Reports of physical and sexual abuses or neglect	Begin within 24 hours.
Reports of dependency	Begin within 48 hours

Source: Compiled by Program Review staff from the memorandum of understanding .

TABLE 4.3
DSS/L&R Memorandum of Understanding
Time Frames For Adult Investigations

TYPE OF REPORT	TIME FRAME
Report of adult in an emergency	Begin within one hour
Reports other than emergency	Begin within 24 hours.

Source: Compiled by Program Review staff from the memorandum of understanding .

Untimely Response Reduces Quality of Nursing Home Investigation

Untimely complaint investigations can lead to a failure to substantiate the complaint, not because the situation did not occur, but because clear evidence no longer exists. Two examples illustrate the problem.

L&R monitors observed operations at the Lexington nursing home cited above after the July 22-31 survey to ensure correction of deficiencies and to prevent harm to the residents. Immediately after the state monitors left and after the nursing home underwent a resurvey on August 22 and 23, several quality of care problems occurred, according to family members and public statements by the facility administrator. These problems included disruption of food services and inadequate staffing. At a meeting with residents' families on August 29 the facility administrator admitted that the facility was out of compliance and promised the problems would be resolved.

Lexington ombudsmen and family members filed complaints, but the Division's response was inconsistent. An investigator did not look into the dietary, care and service, and staffing allegations until September 12, and then found the dietary complaints

unsubstantiated, despite the administrator's public acknowledgment on August 29. After Program Review staff members discussed the complaint investigation with the Inspector General and the Director of L&R on October 18, a second investigation was launched (October 22), and two dietary complaints were substantiated, but other complaints about staffing and care and service were not substantiated.

In another instance, complaints were lodged about poor quality of care resulting in patient bedsores. The complaint was not investigated until approximately eight weeks later. The result was an unsubstantiated complaint, based upon the fact that active bedsores were not found, although signs of healing were present.

Complaint Investigations Not Timely

L&R has failed to meet the time standards for opening complaint investigations, according to findings of two external oversight agencies, HCFA and the Cabinet for Public Protection and Regulation's Protection and Advocacy Division (P&A). In 1995, the U.S. Department of Justice found that abuse and neglect reporting and investigating state-run juvenile treatment centers was inadequate and ineffective. The three outside examinations and L&R's own reviews resulted in the following findings:

P&A criticized L&R for its consistent failure to adhere to requirements for timely initiation of investigations. In reports issued for 1993, 1994 and 1995, P&A criticized L&R for its failure to meet time lines set out in the contract between the OIG and Department for Social Services (DSS). Under the contract, which is controlling for all human resources institutions, the time frame for beginning an investigation of physical and sexual abuse or neglect in state juvenile treatment facilities currently stands at 24 hours. L&R performed 212 such investigations in 1994 and 344 in 1995. While P&A found in its most recent report that "several of the 344 investigations reviewed were extremely well done, with timely responses and completion times, good investigatory techniques, justifiable conclusions," the agency also concluded that "glaring flaws remain in the system."

As Table 4.4 shows, it took an average of almost three days to open investigations in juvenile treatment facilities in 1995, over ten days in ICF/MR facilities and almost 19 days in psychiatric hospitals. In its October 1996 report, P&A indicated that the average amount of time to complete an investigation for all facilities in 1995 was 74.5 days, a significant increase from 36.7 in 1994. P&A also said the average elapsed time, or the time it takes to investigate an allegation and forward the paperwork to central office, was 122.4 days in 1995, almost twice as long as 62.7 days in 1994.

TABLE 4.4
Abuse and Neglect Investigations in State Children's Facilities*
Elapsed Time and Substantiation Rate for 1993 - 1995

	1993	1994	1995
Total Complaints	48	94	166
Investigations Begin	3.6 days	2.5 days	2.8 days
Investigations Completed	40.8 days	40.6 days	84.7 days
Elapsed Time**	75.3 days	79.2 days	136.3 days
Complaints Substantiated	9%	31.9%	8.4%

Intermediate Care Facilities/Mental Retardation
Abuse and Neglect Investigation
Time Frames

	1993	1994	1995
Total Complaints	99	86	105
Investigations Begin	5.7 days	8.5 days	10.6 days
Investigations Completed	35.8 days	27.6 days	42.8 days
Elapsed Time	58.3 days	38.2 days	83.6 days
Complaints Substantiated	4%	10.5%	5.7%

Adult Psychiatric Hospitals
Abuse and Neglect Investigation
Time Frames

	1993	1994	1995
Total Complaints	61	32	73
Investigations Begin	5.7 days	7.6 days	18.8 days
Investigations Completed	57.7 days	48.5 days	97.1 days
Elapsed Time	81.1 days	100.6 days	155.9 days
Complaints Substantiated	11.1%	15.6%	11.6%

SOURCE: Cabinet for Public Protection, Division of Protection and Advocacy.

NOTE: * Includes juvenile residential treatment centers, group homes and Re-Ed centers for status offenders.

** Elapsed time is the time from receipt of referral to submission of a completed investigation to L&R.

Although the Cabinet and L&R disputed some of P&A's findings as based upon incomplete and anecdotal data, the Division agreed generally that there was a need to improve. L&R believes that the problem with average elapsed time for investigations "may be one of semantics." The Division indicated that "many times complaints are investigated, found to be unsubstantiated, this is communicated to supervisors, yet the report isn't typed and sent to central office promptly. This is a resources issue." The Division Director and Inspector General also said there are abuse complaints that often should not be investigated as abuse complaints because they do not allege abuse or neglect.

Long response times also presented a problem in state mental retardation facilities and psychiatric hospitals. According to the P&A review, it took 10.6 days to begin an investigation of abuse or neglect in state intermediate care mental retardation facilities (ICF/MR) in 1995, which was up from the 5.7 recorded in 1993. The increase was even more marked in state psychiatric hospitals, going from 5.7 days in 1993 to 18.8 days in 1995.

Internal L&R reports also find timeliness problems with complaints investigation. Some of these problems are mentioned in recent SAQIP documents, while others are addressed in a section supervisor's memorandums to upper management. In the SAQIP, L&R acknowledged that the major problem for the last year (1995) was the failure to investigate and finalize complaints within time frames, especially when a quick response was needed. A review of complaint reports submitted revealed that only 30 percent were processed within acceptable time frames. In approximately 7 percent of the complaint records, conclusions were unclear or did not clearly match the evidence gathered, the SAQIP report indicated. Complaint documentation problems also were noted.

In internal memorandums to top management, L&R's Complaints Section Supervisor expressed concerns about the complaints investigation process, including a need for quicker response to serious complaints, inconsistency in following up on backlogged complaints, and a need to maintain high standards of quality and timely referrals to other agencies.

The memorandum also alluded to inefficient handling of complaint reports. On one occasion, the Supervisor wrote, a regional program manager dispatched surveyors some distance away to a facility that had "eight or nine outstanding initial investigations or follow-up reports pending, only to conduct one several month old abuse investigation."

An earlier memorandum talked about complaint backlogs. In a June 1, 1995, memo, the Supervisor said the complaints section had 983 initial complaint reports that were not reported to the central office. He said there was a similar number of reports with pending follow-ups.

HCFA is critical of L&R's complaint investigation system. The Division's complaint investigation problems are long-standing. In the 1995 SAEP report (Table 3.2),

HCFA said L&R needs "to implement and effectively maintain an effective complaint investigation system." HCFA said complaint investigation results were not reported in a timely manner. Division records showed that 350 complaint investigations conducted in FY 94 were not brought to closure. The SAEP report recommended that an effective system be put in place "to assure that complaint investigations are processed timely." The Division responded that it had undertaken a thorough study of the system "to develop procedures to assure that time frames are met."

In response to HCFA's criticism, L&R said it planned to complete installation of a new automated complaints tracking system (ACTS) and begin using it. (The system will be discussed later in this report.) L&R said it would develop an effective response system by designating priority levels; this was implemented in January 1997.

In 1995, the U.S. Department of Justice found problems with abuse and neglect investigations in state-run juvenile facilities. Its investigation found that some state-run facilities were violating the statutory and constitutional rights of juvenile inmates. The report concluded:

For abuse complaints that are filed, the complaints are not processed with any sense of priority. Minor complaints and infractions receive the same level of attention as major incidents of physical and verbal abuse. Consequently, a severe backlog of abuse complaints exists and severe incidents of abuse remain uninvestigated. When finally investigated, major incidents of abuse are impossible to corroborate. Key evidence is completely outdated and often the affected youth has left the facility. Good staff have become frustrated with the often frivolous nature of many of the complaints actually investigated and poor staff remain undisciplined within the system. Without prioritization, the log jam of complaints at the administrative level results in slow and often unsatisfactory resolutions to serious issues and allegations of abuse and neglect.

Division Develops Complaints Handbook, Forms Complaint Teams

The Division itself will be the first to admit it has problems with timeliness in the complaints investigation process and needs to improve it. "We simply must find a way to deal quickly with urgent matters," the Complaints Section Supervisor wrote the Inspector General (IG) on February 6, 1996.

According to the IG, problems with the complaints investigation process have been recognized and the Division has undertaken the following measures for improvement:

L&R has developed a draft handbook which includes a system of prioritizing complaints. The draft handbook, as issued in October 1996, includes a system of prioritizing complaints for investigatory purposes. New regional complaints teams will use the handbook. The establishment of priority levels is consistent with a recommendation in a consent decree between the state and the U.S. Department of Justice. Table 4.5 shows complaint priority levels, based on the degree of severity of the incident.

TABLE 4.5
HEALTH COMPLAINT PRIORITY LEVELS

Priority Level	Seriousness	Time Frame
Priority 1	Likely to cause death or serious injury, harm or impairment; COBRAs; sex abuse	Within 48 hours
Priority 2	Actual harm; noncompliance results in a negative outcome that has compromised the resident's well being; exploitation; resident harm alleged	Within ten working days
Priority 3	No actual harm; potential for more than minimal harm; verbal abuse; no harm alleged; under staffing with potential for a negative outcome	Within 45 days
Priority 4	No actual harm; potential for only minimal harm; records posting; certain residents' rights and personal care issues; lost personal articles; isolated housekeeping and activities issues	Not to exceed 120 days Next on site visit or by phone

Source: L&R Complaints Handbook (Draft)

Prior to the transfer of responsibility for abuse and neglect investigations in psychiatric hospitals and ICF/MR facilities, the Division Director and Inspector General said they were drafting a new MOU regarding psychiatric hospitals and ICF/MR facilities. They said they were narrowing the definition of what actually constitutes an incident of abuse or neglect. They also said they were working with mental health and mental retardation, and psychiatric hospital representatives "to stop the submission of reports to L&R unless abuse or neglect is suspected."

These new standards are maximums but do set expectations. State and private facilities are subject to different standards. Forty-eight hours is the federal maximum under HCFA standards for Medicare/Medicaid certified facilities. However, state-operated facilities, such as juvenile centers, are subject to a 24-hour standard. It is unlikely that the public would find it acceptable for law enforcement agencies to take up to

48 hours to investigate an incident "likely to cause death or serious injury, harm or impairment." Similarly, Priority 2 complaints can involve "actual harm," yet the investigation time is ten days. Even Priority 3 complaints offer the "potential for more than minimal harm," yet investigators have up to 45 days to look into these complaints.

L&R management has approved formation of complaint investigation teams.

The Division Director has verbally approved a plan to form complaint teams in each of the four regions. The size of the teams and composition is being left up to the regions, according to officials. Some regions have formed their teams, while others were still creating them. At last word, the Lexington and London regions had formed their teams, but Louisville and Hopkinsville had not. Three members were planned for the London team, with two "floaters," according to the RPM. The Lexington region has five members appointed. Regions are expected to decide whether the team members will be permanent or whether other staff members will rotate in and out of the teams. The teams apparently will be using a draft complaints handbook.

Dedicated complaints staff is used in other states and does reduce the time-conflict problems involved in doing routine surveys and responding to complaints. Reduction of staff for routine survey work may, however, cause further timeliness and backlog problems. Management should ensure that qualified staff are selected for these positions.

Relations With External Agencies

Some ombudsmen say they have problems obtaining information about complaints they file with L&R. As a part of the process, L&R should follow up with law enforcement and prosecutors in cases where complaints indicate criminal activity.

L&R Should Be More Responsive to Ombudsmen

Some local ombudsman report problems with obtaining information about the complaints they file. Complaint file numbers are not available at the time the ombudsman report them; it is difficult to obtain information on the complaint without the assigned number. Complaints submitted to L&R are generally the most serious complaints the ombudsmen handle. Local ombudsmen need timely complaint investigations and easy access to current information on their complaints. Furthermore, because allegations about one facility are grouped together under one complaint number, allegations could be lost in the shuffle or it could be difficult to gather information on a specific allegation. For example, one complaint contained 32 separate allegations. L&R said HCFA requires that multiple allegations must be combined under the same control number.

Currently, the agreement between L&R and the ombudsmen requires L&R to investigate and resolve written complaints referred by ombudsmen and provide a written summary of actions taken within 30 days from the date of final action. The Office of State Long-term Care Ombudsman referred 884 complaints to L&R in FFY 96, or about 20

percent of the 4,500 the office received. Figures supplied by the State Long-term Care Ombudsman (Table 4.6), show 166 of the cases were fully resolved, but 355 were referred, with no final report from the Division. According to the State Long-term Care Ombudsman, ombudsmen do not receive feedback on these complaints, which he said seemingly fall into a "black hole."

RECOMMENDATION #7: Cooperation With Ombudsmen

L&R management should ensure compliance with federal regulations pertaining to the involvement of ombudsmen in the survey and complaints process and access to information and status reports. The OIG and the State Ombudsmen should resolve the current contract dispute. The OIG and the State Ombudsmen should undertake some joint meetings between their staffs to improve communication and cooperation, and both should establish clear policies regarding their relationship which emphasize their mutual roles as allies in public protection.

**TABLE 4.6
Status of FFY 1996 Ombudsman
Referrals To L&R**

Number of Complaints	Description of Resolution
30	Still open with no response from L&R because the complaint is too recent
68	Needs legislative or regulatory action to be resolved
51	Not resolved to the resident's satisfaction
37	Withdrawn formally by the resident
355	Referred, but no final report from L&R No feedback from L&R
19	Referred and agency failed to act because L&R would not investigate
77	No action needed or appropriate
76	Partially resolved
166	Fully resolved
5	Other
884	

SOURCE: Compiled by Program Review staff from information received from state Long-term Care Ombudsman.

L&R Should Refer Appropriate Complaints to Law Enforcement Agencies

L&R needs to follow up with law enforcement and prosecutors in all cases where complaints indicate criminal activity in private facilities or in Cabinet for Health Services- or Cabinet for Families and Children-operated facilities. In 1994, as a response to P&A's criticism, L&R developed an "action plan" to improve the Division's handling of resident complaints within agency-operated facilities. The action plan, which required a cooperative effort between several departments, proposed involving local law enforcement personnel in some investigations. The plan was never fully implemented because of the consent decree and the transfer of abuse and neglect investigatory authority over state-owned facilities.

Private health facility residents enjoy the same rights as any private citizen. Any complaints involving possible criminal activity, including theft or physical assault, should be reported to the appropriate law enforcement agency. L&R staff are not trained law enforcement investigators; therefore, law enforcement agencies should be notified of any complaint which involves possible criminal activity. This practice would not preclude L&R from conducting its own investigation into licensure or certification violations. These should be considered separate issues.

For example, in January 1997 a surveyor investigated what the L&R complaint report termed an "illegal diversion of controlled substances." Supposedly controlled substances were being given to an employee who, in turn, was selling them at the local night spot. This type of allegation, illegal sale of drugs, does not fall under the jurisdiction of L&R. Illegal sales of drugs should be a law enforcement responsibility. However, license and certification program requirements involving the dispensing and control of drugs in a facility would be under its authority. Program Review staff were told by the complaint investigator that he did not contact law enforcement and did not consider doing so at the time. According to the IG and L&R Director, this approach was contrary to agency guidelines.

RECOMMENDATION #8: Cooperation With Law Enforcement

To ensure protection of residents and the public and the preservation of possible evidence, L&R should ensure that its staff immediately notifies the appropriate law enforcement agency of any complaint or survey finding involving the possible commission of a criminal act. This practice should not prevent L&R from conducting its required complaint investigation within the parameters of a licensing or certification violation or condition of public harm.

CHAPTER V

MANAGEMENT

The Division of Licensing and Regulation's (L&R) management is responsible for ensuring that the agency carries out its missions and duties in an effective and efficient manner. But, as stated in the preceding chapters, L&R's performance in licensure and certification, and complaint investigations could be improved. Management must continue to ensure its tools are used effectively to achieve the goals and objectives set forth in the Division's mission statement, as well as those defined in agreements with other agencies.

An up-to-date policies and procedures manual is a vital tool for efficiency and effectiveness; however, the Division's current manual is outdated. The Division needs to look at problems with the communication of policies and procedures from the central to regional office level.

Problems with regional offices operating contrary to central office policy or inconsistently may be solved with the new organizational alignment. Information management and continued development of computerization and electronic processes would help with the workload problems. Also, even though the mission statements call for the Division to have an effective evaluation system, the only federally required for certified facilities. In addition, management should be aggressive in seeking federal funding.

Policies and Procedures

An up-to-date policies and procedures manual is essential if for L&R is to improve its efficiency and effectiveness; however, the Division's current manual, developed in 1987, is outdated. The Division needs to do a better job communicating policies and procedures.

Division's Policy Manual Should Be Kept Up-to-Date

It is important for L&R to have an up-to-date policies and procedures manual if it is to improve efficiency and effectiveness. Current and well-developed policies and procedures are essential to an organization where employees operate somewhat independently, which is the case with the Division. To ensure continuity and uniformity in program implementation, management should review its policies and procedures on a regular basis, with updates as necessary. In addition, a current and complete policies and procedures manual is essential for training new employees.

The Division's current policy manual, developed in 1987, is incomplete and outdated. While some of the procedures contained in the manual reflect current processes, other sections are outdated, pages or sections are missing, and the manual is generally not used by staff.

The Division recently issued a draft of a complaints handbook. Newly authorized complaints teams are using the draft policies and procedures as a tool for guidance in performing their duties.

L&R should explore the possibility of computerizing policies and procedures. While this may not be achievable at this time, management should include this in its planning function. As a statewide information management system is developed, computerization should be a primary objective.

Policies and Procedures Should Be Updated

As noted earlier, most work is conducted in regional offices. Surveyors spend most of their time in the field and are generally in the office only for short periods of time. With less than usual contact with staff, it is imperative that management communicate effectively its missions and goals.

According to the L&R Director, "All changes in office policy and procedures are transmitted to all office staff via memoranda from the Director." The Division Director said communication and distribution of policies take place in regular staff meetings, in statewide training events and through formal memoranda sent to all regional offices. But, this is not always the case, according to some regional office staff. Meaningful policies, they say, are often communicated by telephone or fax machines. In one case, a region had not received an October 1995 administrative order that directly affected policies and procedures for complaints investigations. As mentioned earlier, some regions were routinely alerting health facilities of pending initial survey visits because staff thought announcement was policy.

L&R issued a complaints handbook in draft form on October 1996. An Assistant Division Director said the handbook was still in draft as of February 19, 1997. According to the Assistant Division Director, the Division Director verbally approved priority

guidelines for use at the regional level and these were communicated to the regional program managers by memorandum by an administrative review officer. In February 1997 a Lexington complaint team member told Program Review staff that policies and procedures were needed concerning the complaint teams. She said policies and procedures would improve the effectiveness of the complaint process.

RECOMMENDATION #9: Update, Complete Policy Manual

L&R should ensure that the agency's policies and procedures manual is kept accurate and current. All staff should be made aware of the contents, and changes should be disseminated quickly.

Management Control

Regional personnel have at times acted contrary to policies or inconsistently. The new organizational alignment of L&R may provide the necessary management control to address this problem. Information management and computerization should continue to be a priority for the Division to further improve scheduling and planning surveys, monitoring complaint compliance, and to reduce paper processing and timelags. The Division should also develop evaluation systems in the non-certified areas of responsibility, not currently covered by federally required systems.

**More Direct Central Management
Control of Regional Activities May Be
Needed**

In Chapter II, the organization of L&R was discussed. Under both the previous organization and the realignment announced in December 1996, the regional offices are under the direct control of the L&R Assistant Directors. Central office sections responsible for complaints, licensing and certification, and day care centers do not have direct supervisory authority. These central office sections provide policy directives, compile data and provide support functions. The supervisor of the Complaints Section indicates that regional personnel tend to act independently at times, even contrary to central office policies, doing such things as announcing surveys ahead of time and investigating only portions of outstanding complaints.

Prior to the proposed realignment of the Division in December 1996 regional offices were under the direct supervision of the L&R Director and Assistant Director. Under the new organization, two assistant director positions were created to give long-term care and non-long-term care activities more individual focus.

A well-developed management control system is especially important for L&R, because the Division is an agency in which employees' work is largely independent.

RECOMMENDATION #10: Management Controls

L&R should ensure that its management structure has the ability to quickly detect and correct problems at the regional levels related to quality and timeliness of surveys and complaints. The Cabinet and OIG need to provide L&R with the necessary computer resources and establish management practices which will allow determining inspection schedule cycles, compliance with survey and complaint time frames, and the status of all activities related to licensure and certification. Policies and procedures should be reviewed to ensure the reliability and validity of all data at the central office and regional levels.

L&R Lacks Reliable Information System For Planning, Evaluation and Monitoring

Information management is one of the most important functions of an efficient operation and includes the computerized filing system as well as the paper filing system. Although some funding has been procured from the Health Care Financing Administration (HCFA) for computerization, the Division should continue in its efforts to provide its operation with the most up-to-date technology available.

Paper or hard copy files reviewed by Program Review staff contained data that did not appear to mirror information in regional office files. The former Inspector General confirmed that files in the central office contained only select information from the regional files. The former Director of L&R indicated in an interview that it was left up to supervisors in the regions to determine file composition. A Program Review staff inspection of 22 central office complaint files found that three could not be found and that remaining files seemed to have no consistent organization. It was not possible to determine whether all required data files were present, because criteria did not exist specifying necessary documentation. In several files, final actions, dispositions and distribution of complaints and action plan responses were not reflected. Reliable information is critical to the effective implementation of programs.

The Division must continue to plan and budget for additional automation equipment to enhance its ability to operate in an efficient manner. An interview with a HCFA official confirmed that the Division has not requested funding for a statewide information management system, even though the chance of procuring these funds appears to be good. Management must make every effort to computerize as many of the manual functions as possible.

Existing Computer Systems Unreliable

Computerization in an office setting is a growing trend, particularly for word processing, data processing and communication. Computerization can mean faster information retrieval, the ability to obtain more up-to-date and reliable information,

speeding up of office functions, improved efficiency in decision making, and increased productivity and enhancement of operational control.

L&R only recently installed a new automated complaints tracking system (ACTS), but has experienced problems in the early stages. In SAEP reviews, HCFA noted the need for computerization to track complaints and provided \$28,000 to install the system. According to L&R, ACTS is a menu-driven, multi-user database application designed to manage all aspects of complaint log-ins, tracking and investigation. The system is designed to provide easy on-line access and to obtain timely and accurate information on facility complaints, allegations, investigations and associated information. But the key to the effectiveness of the system will be in keeping it functioning and putting up-to-date data into the system.

Currently, the system is operational but has complications. Recently, the system was apparently down for approximately one week. According to an Assistant Division Director, ACTS was operating but was having problems. She said on February 19, 1997, that there was "no way" to evaluate the effectiveness of the system.

L&R's central office is linked by computer with HCFA, but information is not up-to-date. The data system, called "OSCAR," is a national HCFA data base comprised of information entered by state agencies during periodic inspections and/or certifications of Medicare, Medicaid, and CLIA health care facilities. Information supplied by the regions is typed by a central office staff person into the system's database. Three people have direct access to the system. Because of procedural findings related to data input, the OSCAR data system does not provide the most up-to-date information.

For example, an implementation monitoring report for the new survey system requested by Program Review staff and generated from the OSCAR system, suggested that Kentucky was considerably above the national average for facilities in substantial compliance, when in reality this was not the case. Only partial information had been input into the system at the time, resulting in a misleading report.

L&R Lacks Evaluation System for Non-certified Activities

Although the mission statements for L&R specifically state that a routine, effective evaluation system for both administrative and program management should be implemented, the only formal systems are related to the federal requirements and activities. According to interviews with the four regional managers, no formal performance measures were being used, other than timeliness or meeting deadlines. In the absence of formalized objectives and established performance measures, it is difficult to determine what the Division wants to achieve.

It is vital that the Division create an internal method for evaluating the efficiency and effectiveness of the operation related to state mandated activities. The Division needs

to gauge efficiency in areas other than federally certified facilities or services. Management needs to look at itself to determine whether improvements are needed, the effectiveness of policies and the effectiveness of Division activities as well. Such Division performance reviews could include looking at regional activities to determine how timeliness can be improved.

HCFA Criticizes Division for Charging State Expenses to Federal Funds

On the issue of fiscal management (Table 3.2), HCFA found in a February 22, 1996, report that “time validation records indicated that significant errors were committed and incorrect charges made.” The report said “Complaint investigations were charged 100% to the federal program. A part of complaint visits should be charged to state licensure programs.” HCFA also said that state complaint inspections on certified facilities were charged totally to federal programs and that noncertification grants were charged to the survey and certification grant. In response to federal agency suggestions, the Division vowed to review and update its time-coding procedures, train staff and develop a monitoring system. L&R has changed its cost calculations to reflect an 80/20 federal/state cost.

It is important for L&R to maintain an accurate information system related to time spent on federal activities versus state activities. HCFA can disallow such charges and recover money from the state because of time-coding errors. Program Review staff found one instance which occurred several months after the HCFA findings in which more personnel were recorded than were present for a survey activity. In the August 1996 monitoring of a Lexington facility, a team leader was recorded as a member of a follow-up visit when, according to that person, she was on leave. That time logged ordinarily would be charged to HCFA.

Acquiring Federal Dollars

The Division needs to aggressively seek more federal funding for computerization and staffing. Although there are personnel limits imposed, the Division needs to continue strong efforts to explore alternative options. To help in that process, the Division should have a budget person who can devote the necessary time to acquiring federal funding. The Division is in the process of filling this position.

Division Needs to Seek More Federal Dollars

Division staff are responsible for preparing and submitting a yearly budget request to HCFA. The budget request for both long-term and the non-long-term care facilities is a detailed estimate of state survey program costs. The costs are classified according to the category of the proposed expenditure. The estimate of the categories must be explained

completely with respect to the program objectives, the agency's plan of operations, the method to compute the request, annual funding, past history of costs and justifications for future needs or increased needs.

SAEP reports have cited the Division for historically having inadequate staff. One SAEP report indicated that personnel caps could impair the state's ability to hire adequate staff to fulfill the services agreed to in the HCFA contract. However, line item justifications in the budget request for personnel services indicate the state is authorized to augment full-time staff with the appropriate professional consultants and subcontractors required to perform the state survey activities. The state agency also may secure the services of such positions and skills as required in the line item justification relating manpower needs to activities and staff-days noted in the work plan. Although this method of securing adequate staff is clearly invited in the budget request process, and would be justified based upon HCFA's own findings, the Division has not applied for increased funding to secure these services.

According to a HCFA representative, the state should have sought funding for computerization several years ago when it was being encouraged by HCFA. This could have been "costed out" over several years. The federal official further indicated that increases in funding would be possible if a "sensible effort was made." In addition to the personnel costs and the ability to hire consultants and subcontractors, L&R can receive HCFA funding for travel, communications, supplies, office space, equipment, training, motor pool, commodities, and printing, in addition to someone to fulfill nurse registry requirements. The Division should systematically plan to maximize this funding, because the process is on-going.

Budget Position Important for Division

L&R management apparently has not always been as attuned to the HCFA budget process as it should be. During one interview with Program Review staff, the former Division Director indicated that Kentucky received the least amount of HCFA funding among states in Region IV. When asked why, he had no explanation.

Because the HCFA budget process is so critical, the federal HCFA representative urges that L&R assign one employee the responsibility of pursuing the needed federal funding. The budget position within the Division has been vacant for months, but the Division is interviewing candidates. Responsibilities of the position are being met by someone who does not work for the Division. This function is crucial in planning for the Division's needs through the budget request. Responsibilities of the position do not end once the budget request has been submitted. The budget person must begin planning for needs in the next year's budget process. Historical data must be examined, as well as future needs, to maximize the opportunities to fully fund these activities.

APPENDIX A
LONG-TERM CARE FACILITIES
SCOPE AND SEVERITY MATRIX

APPENDIX A

LONG-TERM CARE FACILITIES SCOPE AND SEVERITY MATRIX

	FREQUENCY OF OCCURRENCE			
DEGREE OF SEVERITY	ISOLATED		PATTERN	WIDESPREAD
Immediate jeopardy to resident health or safety	J	POC Required: Cat 3 Optional: Cat 1 Optional: Cat 2	K	POC Required: Cat 3 Optional: Cat 1 Optional: Cat 2
Actual harm that is not immediate jeopardy	G	POC Required: Cat 2 Optional: Cat 1	H	POC Required: Cat 2 Optional: Cat 1 Optional: Temporary Management.
No actual harm with potential for more than minimal harm that is not immediate jeopardy	D	POC Required: Cat 1 Optional: Cat 2	E	POC Required: Cat 1 Optional: Cat 2
No actual harm with potential for minimal harm	A No POC No Remedies Commitment to Correct Not on HCFA-2567		B POC	C POC

	Category 2 (Cat. 2)	Category 3 (Cat. 3)
Category 1 (Cat. 1)	<p>Denial of Payment for New Admissions</p> <p>Directed Plan of Correction, Denial of Payment for All Individuals imposed by HIPAA; and/or</p> <p>Training Fines \$50 -- \$3,000/day</p>	<p>Temporary Management Termination</p> <p><u>Optional:</u></p> <p>Fines \$3,050 -- \$10,000/day</p>

Source: HCFA State Operating Manual; Effective 7/1/95. **POC** = Plan of Correction

Legend:

Substandard Quality Care	Substantial Compliance
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APPENDIX A (CONTINUED)

NOTE: Federal laws and regulations guide how L&R surveyors judge the scope and severity of nursing home deficiencies. Deficiencies can range from A to L, with A being the least serious deficiency and L being the most serious. Reading from the bottom, areas A, B and C, the dark gray areas, show substantial compliance with the laws and regulations, while the medium areas, labeled F and H-L, show substandard quality of care deficiencies.

According to 42 CFR 488.301, a substandard quality of care deficiency is a deficiency which relates to:

- Resident Behavior and facility practices
- Quality of life or
- Quality of care

and which represents either:

- Immediate jeopardy to resident health or safety ;
- A pattern of or widespread actual harm that is not immediate jeopardy; or
- A widespread potential for more than minimal harm, but less than immediate jeopardy with no actual harm.

APPENDIX B

FEDERAL REMEDIES

**APPENDIX B
FEDERAL REMEDIES**

TYPE OF REMEDY	DESCRIPTION
Directed Plan of Correction	Plan of action to correct deficiencies with specific time frames, drawn up by the state, regional office or a temporary manager.
State Monitor	Employee or contractor of the state oversees the correction of deficiencies at the facility site and protects the residents from harm.
Directed In-Service Training	In-service training for the staff of a facility required by HCFA or the state. This is used when there is a pattern of deficiencies and education is likely to correct it. The facility pays.
Denial of Payment for New Admissions	L&R may deny payment for all new admissions when a facility is not in substantial compliance.
Denial of Payment for All Individuals	Denial of payment for all Medicare and /or Medicaid residents by HCFA.
Civil Monetary Penalties	Fines may be imposed for the number of days a facility is not in substantial compliance.
Temporary Management	Temporary appointment by HCFA or L&R of a substitute facility manager who can hire, terminate or reassign staff, obligate facility funds, alter procedures and manage the facility.
Termination of Provider Agreement	Medicare or Medicaid agreement may be terminated if a facility is not in substantial compliance with program standards, even if immediate jeopardy does not exist or if the facility does not submit a plan of correction within certain timeframes.
Transfer of Residents or Transfer with facility closure	Emergency mechanism to transfer Medicaid and Medicare residents to another facility or close the facility and transfer the residents. Required when provider agreement is terminated.
Alternative Remedies.	Alternative or additional state remedies approved by HCFA.

Source: Compiled by Program Review from the State Operating Manual and 42 CFR 488.

APPENDIX C

FEDERAL CIVIL MONETARY PENALTIES

Appendix C
Federal Civil Monetary Penalties
Since July 1, 1995

Long-term Care Facility	Date	Amount Imposed by HCFA	Amount Returned to State by HCFA
Hart County Health Care Center	Sept. 19-21, 1995	\$3,965	\$3,818
Britthaven of Pineville	Oct. 24 - Nov. 9, 1995	\$22,500	\$ 0
St. John's Health Care Center	Sept. 29 - Oct. 6, 1995	\$21,350	\$ 0
McLean County Hospital, SNF	Sept. 16 - Nov. 6, 1996	\$68,350	\$ 0
Lexington Center for Health and Rehabilitation	Feb. 28 - June 12, 1996	\$303,000	\$ 0
Green Acres	May 22 - July 8, 1996	\$77,550	\$ 0
Brownsboro Hills Nursing Home	Aug. 2 - Nov. 26, 1996	\$6,000	\$ 0
Tates Creek Health Care Center	July 31 - Aug. 23, 1996	\$48,300	\$ 0
Grand Total		\$551,015	\$3,818

Source: HCFA and Cabinet for Health Services, Office of Personnel and Budget, 1996. Data received from HCFA on December 20, 1996.

APPENDIX D

HCFA EVALUATION OF L&R ENFORCEMENT

HCFA Evaluation of L&R Enforcement

	1994		1995	
CRITERION I Quality, Consistency and Outreach	Acceptable	Needs to Improve	Acceptable	Needs to Improve
Use qualified surveyors	X		X	
Use federal findings to identify training needs	X		X	
Implement and maintain a complaint investigation system		X		X
Investigation of dumping complaints against participating hospitals		X	X	
CRITERION II Fiscal Management				
Annual state agency budget request and activity plan follow federal instructions and accurately reflect the allocation of costs between federal and state programs	X		X	
State Agency justifies expenditures and changes to federal programs by following regulations, policies and approved allocation methodologies.		X		X
Errors were made in allocating charges on time validation records.				
CRITERION III Survey, Process and Systems Management				
Standard survey for home health agencies, skilled nursing facilities and/or nursing facilities within required time frames	X			X
Unannounced surveys		X	X	
Intermediate care facilities/mental retardation recertifications are not being completed prior to the expiration of time limited agreements		X		X
CRITERION IV Evidentiary and Procedural				
Proper documentation of deficiencies		X		X
CRITERION V Federal Monitoring Surveys				
Level A deficiencies are consistent between HCFA and L&R for skilled nursing facilities and nursing facilities	X		X Might signal need for training	
HCFA and L&R deficiencies for other than nursing facilities are consistent	X		X No surveys performed	
HCFA and L&R findings for long-term care facilities on resident assessment, urinary incontinence and restraint use are consistent		X		X

SOURCE: Compiled by Program Review staff from HCFA SAEP Reports.

APPENDIX E

**POTENTIAL SUBSTANDARD QUALITY OF CARE
DEFICIENCIES**

APPENDIX E
A COMPARISON OF POTENTIALLY
SUBSTANDARD QUALITY OF CARE DEFICIENCIES

TYPE OF DEFICIENCY	KY	REGION	NATION
<i>Resident Behavior and Facility Practices</i>			
Physical restraints	35 11.23%	390 15.74%	2,212 15.6%
Chemical restraints	13 4.17%	27 1.09%	124 .88%
Abuse	2 0.64%	37 1.49%	259 1.84%
Staff treatment of residents	8 2.56%	97 3.91%	313 2.22%
Facility must not employ those found guilty of or with a finding on the nurse's aide registry.	9 2.88%	125 5.04%	676 4.79%
<i>Quality of Life</i>	1 0.32%	5 0.20%	42 0.30%
Facility must care for resident to promote Quality of Life	1 .32%	5 .20%	42 .30%
Dignity	19 6.09%	400 16.14%	2,259 16.01%
Self-determination, resident makes choices	1 .32%	100 4.04%	360 2.55%
Resident/family in resident/family groups right to participate	0 0	24 .97%	88 .52%
Facility must listen/respond to resident/family group	0 0	2 .08%	36 .26%
Right to participate in social/religious/community activities	0 0	3 0.12%	23 0.16%
Accommodation of needs and preferences	13 4.17%	209 9.43%	1,656 11.74%
Notice - room/roommate change	0 0	9 0.36%	35 0.25%
Activities program meets individual needs	21 6.73%	207 8.35%	1,535 10.88%
Qualifications of activity director	0 0	10 0.40%	59 0.42%
Medically related social services	21 6.73%	200 8.07%	1,335 9.46%
Qualification of social worker	2 0.64%	6 0.32%	44 0.31%
Environment (safe/clean/comfortable/homelike)	19 6.09%	195 7.87%	1,259 8.92%

APPENDIX E CONTINUED

**A COMPARISON OF POTENTIALLY
SUBSTANDARD QUALITY OF CARE DEFICIENCIES**

TYPE OF DEFICIENCY	KY	REGION	NATION
Housekeeping and maintenance	16 5.77%	285 11.50%	2,115 14.99%
Clean linens in good condition	2 0.64%	58 2.34%	319 2.26%
Private closet space in each room	0 0	5 0.20%	27 0.19%
Lighting	0 0	12 0.48%	110 0.78%
Temperatures	2 0.64%	14 0.56%	155 1.10%
Sound levels	2 0.64%	75 3.03%	374 2.65%
<i>Quality of Care</i>			
Appropriate treatment for incontinent resident	22 7.05%	334 13.48%	1,569 11.12%
No reduction in range of motion unless unavoidable	3 0.96%	19 0.77%	148 1.05%
Range of motion treatment and services	10 3.21%	127 5.13%	1,169 8.29%
Appropriate treatment for mental/psychosocial difficulties	11 3.53%	95 3.83%	493 3.49%
No development of mental problems unless unavoidable	1 0.32%	4 0.16%	43 0.30%
No NG tube unless unavoidable	0 0.00%	7 0.28%	28 0.20%
Proper care and services for resident with Naso-Gastric tube	9 2.56%	147 5.93%	540 4.54%
Facility is free of accident hazards	9 2.88%	293 11.82%	2,373 16.92%
Supervision/devices to prevent accidents	6 1.92%	166 6.70%	1,329 9.42%
Resident maintains nutritional status unless unavoidable	16 5.13%	227 9.16%	1,184 8.39%
Residents receive therapeutic diet when required	5 1.60%	82 3.31%	356 2.54
Facility provides sufficient fluid intake	19 6.09%	104 4.20	472 3.35%

APPENDIX E (CONTINUED)
A COMPARISON OF POTENTIALLY
SUBSTANDARD QUALITY OF CARE DEFICIENCIES

TYPE OF DEFICIENCY	KY	REGION	NATION
Proper treatment/care for special care needs	5 1.60%	87 3.51%	519 3.68%
Drug regiment is free from unnecessary drugs	16 5.13%	302 12.19%	1,571 11.13%
No use of antipsychotic drugs except when necessary	5 1.60%	45 1.82%	199 1.41%
Gradual dose reductions of antipsychotic drugs	4 1.28%	41 1.65%	196 1.39%
Medication error rates of five percent or more	11 3.53%	156 6.30%	721 5.11%
Residents free from significant medication errors	7 2.24%	74 2.99%	370 2.62%

NOTE: The table identifies deficiencies that may indicate substandard quality of care if they were cited at the necessary level of scope and severity. (F and H to L as shown in Appendix A).

Source: OSCAR system data for long-term care facility surveys conducted on or after October 1, 1990.

APPENDIX F

RECOMMENDATION WORKSHEET

APPENDIX

PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

DIVISION OF LICENSING AND REGULATION CABINET FOR HEALTH SERVICES OFFICE OFFICE OF INSPECTOR GENERAL

RECOMMENDATION WORKSHEET

REVISED APRIL 10, 1997

RECOMMENDATION #1: ANALYZE STAFF NEEDS, DISTRIBUTION

L & R should conduct a staff-time analysis that takes all factors related to workload distribution i should consider:

- Such factors as personnel numbers and job duties, workload, leave time and travel;
- Alternatives to employing full-time state employees;
- Efficiency improvements from a realignment of regions, changes in team sizes, computerization, ar
- Impact efficiency changes will have on quality, ensuring that quality is not sacrificed..

AGENCY RESPONSE:	STAFF RESPONSE/COMMENTS
L&R RESPONSE A task force has been established to review existing staff-time analysis. Members of the newly designated task force include the two assistant directors, the supervisor of the Complaints Section, and the manager of each regional office. The task force will study staff work-loads, regional distributions, and management of staff time. Hiring alternatives will be discussed with a primary goal that quality of work will not be sacrificed. The first meeting of the task force is scheduled for April 15, 1997. The target dates for completion of each goal will be identified during the first meeting. Results of the task force will be submitted to the Director of Licensing and Regulation and the Inspector General for implementation.	 The Inspector General should provide the Investigations Committee with target dates identified. COMMITTEE ACTION: Adopted 4/10/97

RECOMMENDATION #2:**Strengthen Survey Process**

L&R should continue to improve the quality of the survey process by:

- **Continuing to ensure that nursing home inspections are unannounced and unpredictable;**
- **Considering common ownership of nursing homes by reviewing problems in related facilities from one facility are not used to temporarily bring another into compliance; and**
- **Ensuring that regional managers and inspectors are following procedures that ensure quality numbers of inspections..**

AGENCY RESPONSE:**STAFF RESPONSE/COMMENTS:**

L&R RESPONSE

Plans are being formulated to ensure that surveys are not predictable. Facilities with multiple complaints or a history of serious problems will be surveyed more often than facilities with a history of compliance. Staggering the schedules will make them less predictable. Our current State Agency Quality Improvement Program (SAQIP) is tracking survey time frame averages to ensure that surveys are conducted within the Medicare-mandated nine to 15 month span with a state-wide average of 12 months.

Also, surveys will be scheduled at facilities in response to complaints alleging problems on specific shifts. For example, if the complaint alleges understaffing during the weekends or at nights, surveys will be done during these times.

When possible, during a survey of a facility which has the same owner as other facilities in the area, visits will be conducted at nearby sister facilities to ensure that staff are not being shifted between the facilities.

As in the past, the effectiveness of the survey process will not be sacrificed to increase the number of surveys accomplished. If fewer surveyors are used in a facility, the length of the survey will be increased.

No staff response necessary.

COMMITTEE ACTION:

Adopted 4/10/97

APPENDIX

RECOMMENDATION #3: Information Sharing Desirable

The Cabinet should look internally, as well as externally, to establish procedures for cooperative exchange of information among agencies or other Cabinets with overlapping facility responsibilities. should ensure compliance with policies requiring that inspectors contact, and review files from long-performing enforcement functions in Kentucky long-term care facilities.

AGENCY RESPONSE:	STAFF RESPONSE/COMMITTEE ACTION:
<p>L&R RESPONSE</p> <p>A meeting has been scheduled with representatives from the Office of the Long-Term Care Ombudsman on April 18, 1997, to discuss any problems relating to communication between the two agencies and to begin establishing better avenues to facilitate communication and the sharing of information. Staff of the Division will continue to contact the Long-Term Care Ombudsman as required by federal guidelines. These contacts will be monitored through the state Agency Quality Improvement Program (SAQIP).</p> <p>A meeting was held with representatives from the Department for Social Services on March 18, 1997. The roles of both agencies in the investigation of abuse and neglect in health facilities were discussed during this meeting. Other methods to enhance communication and information sharing with other state agencies involved with the licensing and certification process will be actively explored.</p>	<p>The Inspector General should report on the March 18, 1997 and April 18, 1997 meetings to the Investigations Committee.</p> <p>The Inspector General also should report on the March 18, 1997 and April 18, 1997 meetings to the Investigations Committee the re with other agencies.</p> <p>COMMITTEE ACTION:</p> <p>Adopted 4/10/97 Requested Agency report back to results.</p>

RECOMMENDATION #4: Improve Enforcement, Compliance

The Office of Inspector General, using its own administrative authority, should develop a care rating system, such as a regional rating guide, which reports all facilities and a inspection and complaint results. L&R should ensure that the public has open and real surveys in line with federal requirements and should consider informing local newspapers also should review processes and procedures related to the state monitoring process and coll

AGENCY RESPONSE:

STAFF RESPONSE/CO

L&R RESPONSE

The Division supports the revision or rescission of KRS 216.550 which mandates the method for rating long-term care facilities. As long as this statute is in force, the Division will continue to rate long-term care facilities as specified by this statute and the implementing regulation (900 KAR 2:030).

No staff response necessary.

The Division will also investigate alternate, supplemental methods for informing the public concerning the quality of care provided by long-term care facilities. These alternate methods may include the establishment of an Internet web page which will be used to share information concerning the current compliance status of health care facilities. All local newspapers should have access to this web page.

The Division should report to Investigations Committee efforts to es

COMMITTEE ACTION:

Adopted 4/10/97

Committee requested follow-up repor

APPENDIX

RECOMMENDATION #5: Repeal Long-term Care Rating System

The General Assembly should repeal the current long-term care facility rating system contained in KRS 216.550-553 and require that the Cabinet annually provide the public with meaningful and easily accessible information about the status of facilities.

AGENCY RESPONSE:

STAFF RESPONSE/COMMENTS:

L&R RESPONSE

As stated above, the Division fully supports any effort to repeal the current long-term care rating system as specified at KRS 216.550-553.

No staff response necessary.

COMMITTEE ACTION:

Adopted 4/10/97

RECOMMENDATION #6: Improve Complaint Investigation Process

The Division should assure close central office monitoring of the complaints investigation process to closure of complaints. L&R should:

- **Ensure that complaint investigations begin with a physical presence, not a telephone call, and establish maximum time frames;**
- **Establish maximum time frames for completing investigations and addressing complaints;**
- **Consistently monitor compliance with these time frames; and**
- **Conduct post-investigation reviews for ensuring compliance and training requirements.**

AGENCY RESPONSE:

STAFF RESPONSE/COMMITTEE ACTION:

L&R RESPONSE

The Division is in the process of appointing a supervisor of the Complaints Review Section with the mandate to develop an effective method to ensure that the complaint investigation process is appropriately managed. This supervisor will implement systems to monitor timeliness of complaint investigations and resolutions.

Currently, all complaints are initiated through on-site visits instead of telephone calls, and all complaints are assigned a specific date for completion.

The recently acquired Automated Complaints Tracking System (ACTS) has the ability to monitor complaint time frames. All regional managers have been instructed to use the ACTS system to ensure that complaints are investigated and completed in a timely manner. Appropriate personnel action will be initiated against staff who fail to meet expected time frames.

The SAQIP program will be used to review compliance with Division policy concerning complaint investigations and targeted training will be initiated as required.

The division should respond to the Professional Standards Committee regarding the mandate to develop a process to ensure that the complaint investigation process is appropriate.

COMMITTEE ACTION:

Adopted 4/10/97

APPENDIX

RECOMMENDATION #7: Cooperation With Ombudsmen

L&R management should ensure compliance with federal regulations pertaining to the inv in the survey and complaints process and access to information and status reports. 5 Ombudsmen should resolve the current contract dispute. The OIG and the State Ombuc some joint meetings between their staffs to improve communication and cooperation, ar clear policies regarding their relationship which emphasize their mutual roles as allies in pul

AGENCY RESPONSE:

STAFF RESPONSE/CO

L&R RESPONSE

During the meeting with the Office of the Ombudsman on April 18, 1997, as referenced above, the agenda will include the schedule for future meetings. Another goal of this meeting will be to resolve the issue concerning the memorandum of understanding between the two agencies.

The Inspector General should report Investigations Committee the results o

COMMITTEE ACTION:

Adopted 4/10/97

Committee requested report of meeting.

RECOMMENDATION #8: Cooperation With Law Enforcement

To ensure protection of residents and the public and the preservation of possible evidence, its staff immediately notifies the appropriate law enforcement agency of any complaint or the possible commission of a criminal act. This practice should not prevent L&R from complaint investigation within the parameters of a licensing or certification violation or con

AGENCY RESPONSE:

STAFF RESPONSE/CO

L&R RESPONSE

As required by current policy, appropriate law enforcement agencies will be notified concerning any allegations of criminal activity. All staff have been trained regarding this policy. Unless specifically prohibited by a law enforcement agency, the Division will investigate allegations of regulatory violations.

No staff response necessary.

COMMITTEE ACTION:

Adopted 4/10/97

APPENDIX

RECOMMENDATION #9: Update, Complete Policy Manual

L&R should ensure that the agency's policies and procedures manual is kept accurate and that staff be made aware of the contents, and changes should be disseminated quickly.

AGENCY RESPONSE:	STAFF RESPONSE/COMMITTEE ACTION:
<p>L&R RESPONSE</p> <p>The Division's policy manual will be evaluated to ensure that it is accurate and reflects current office policy. The updated manual will be posted on the Division's computer network where it will be available electronically to all central office staff and all regional offices. Changes in policies and procedures will be immediately posted on the network policy manual and communicated to staff through either e-mail or other correspondence.</p>	<p>The Division should report to the Investigations Committee the results of the review of the manuals and its efforts to computerize the manuals.</p> <p>COMMITTEE ACTION:</p> <p>Adopted 4/10/97</p>

RECOMMENDATION #10: Management Controls

L&R should ensure that its management structure has the ability to quickly detect and regional levels related to quality and timeliness of surveys and complaints. The Cabinet a L&R with the necessary computer resources and establish management practices which inspection schedule cycles, compliance with survey and complaint time frames, and the statu to licensure and certification. Policies and procedures should be reviewed to ensure the reliability data at the central office and regional levels.

AGENCY RESPONSE:

STAFF RESPONSE/COMMITTEE ACTION:

L&R RESPONSE

The management organization of the Division has been restructured to more effectively provide direction and control of office staff. One assistant director has been given responsibility for managing the licensing and certification of long-term care facilities, home health agencies, and renal dialysis facilities. Another assistant director has been given responsibility for the licensing and certification of other levels of health care and child care facilities. Both assistant directors will have joint responsibilities for the complaints management process and public information requirements of the Division.

The revised structure will provide more direct supervision of staff and a clear channel for the flow of information between the Director and all other staff. The division of the office along easily defined lines of responsibility will enhance the identification and correction of problems.

The Inspector General should report Investigations Committee regarding submitted to HCFA for the purchase of equipment.

COMMITTEE ACTION:

Adopted 4/10/97

APPENDIX

RECOMMENDATION #10: Continued

L&R should ensure that its management structure has the ability to quickly detect and regional levels related to quality and timeliness of surveys and complaints. The Cabinet a L&R with the necessary computer resources and establish management practices which inspection schedule cycles, compliance with survey and complaint time frames, and the statu to licensure and certification. Policies and procedures should be reviewed to ensure the reli data at the central office and regional levels.

AGENCY RESPONSE:

STAFF RESPONSE/CO

L&R RESPONSE

A request for the purchase of additional computer equipment has been submitted to the Health Care Financing Administration (HCFA). Additional computers will be used to augment the current information management system of the office.

The above-referenced ACTS will be used to monitor complaint timeliness and completeness. The federal Online Survey Certification and Reporting System (OSCAR) will be used to identify problems with certification surveys and deficiency citations. The ASPEN system which is used to accumulate information on all certification survey activity will be used to identify deficiency patterns and documentation problems.

The office will continue to monitor information maintained be [sic] the Division to ensure its accuracy.

APPENDIX G
FOLLOW UP
1997 DIVISION OF LICENSING AND REGULATION
UPDATE TO PROGRAM REVIEW & INVESTIGATIONS COMMITTEE